

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1216

IN THE
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee.

against

CHAIM KAHAN, SOLOMON WERCBERGER and
MOR WERCBERGER,

Defendants-Appellants.

ON APPEAL FROM JUDGMENTS OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

VOLUME 3 — 829a to 1181a

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22 1 A I have no personal knowledge, any shipment, and
2
3 that particular shipment that goes into that, anything, any
4 transaction went into CBS, it wasn't my business to know
5 numbers in any way, shape or form.

6 MR. CORCORAN: No questions.

7 THE COURT: Any questions, Mr. Youtt?

8 MR. YOUTT: No, your Honor.

9 THE COURT: You may step down.

10 Next witness.

11 MR. YOUTT: Mr. Solomon Wercberger.

12 S O L O M O N W E R C B E R G E R , called as a witness,
13 having first been duly affirmed by the Clerk of the
14 Court, testified as follows:

15 THE CLERK: Would you please state your name
16 and spell it for the record?

17 THE WITNESS: Solomon, S-O-L-O-M-O-N,
18 Wercberger, W-E-R-C-B-E-R-G-E-R.

19 DIRECT EXAMINATION

20 BY MR. YOUTT:

21 Q Mr. Wercberger, you also were an officer in
22 the CBS Warehouse on March the 15th?

23 A - Yes.

24 Q And on March the 12th, 1975?

25 A Yes.

23

1

S. Wercherger-direct

2

3

Q And you entered into that business at about the same time that the other two defendants in this case did?

4

A Yes, in July '73.

5

Q How old are you, Mr. Wercherger?

6

A Twenty five.

7

Q And in 1973, then, how old were you?

8

A About 22, 21, 22.

9

Q Are you married, Mr. Wercherger?

10

A Yes.

11

Q How long have you been married?

12

A Six years.

13

Q Do you have any children?

14

A Yes.

15

Q How many children?

16

A Three.

17

Q Where did you go to school, Mr. Wercherger?

18

A I went to school at the United Talmudical

19

Academy.

20

Q Is it the same school then that Mr. Kahan went

21

to?

22

A Right.

23

Q And how long did you go there to school?

24

A From before years, until nineteen.

25

Q Until 197

S. Wercberger-direct

A Yes, until 19.

Q And what kind of studies -- what did you study while you were there?

A Basically, medical studies.

Q Did you take any bookkeeping or warehouse courses at any time?

THE COURT: Wait now, the jurors can't hear the answers.

MR. YOUTT: I'm sorry.

THE COURT: Mr. Klimasewski, would you please read back the testimony so far?

(Reporter read back all questions and answers on direct testimony of Mr. Solomon Wercberger up to this point.)

MR. YOUTT: You can now answer that last question and please keep your voice up.

A No.

THE COURT: Mr. Youtt, would you please just step back a few paces and it might encourage the witness to reach you and in the process, reach the jury.

MR. YOUTT: Fine, your Honor.

Q After you left this school at the age of 19, and you got married, where did you go to work?

25 1

S. Wercberger-direct

2

A I worked first for Able Warehouse.

3

4

Q Did you work at the same place that Mr. Kahan worked?

5

A Right.

6

Q Was he an employee there at the same time?

7

A Yes.

8

Q What did you do at Able Warehouse?

9

A Well, we were actually loading trucks and taking care of the warehouse, incoming stuff and outgoing stuff. Taking care in the warehouse, making orders, everything which had to be done in the warehouse.

13

14

THE COURT: Would you make a real effort to speak louder, please?

15

16

THE WITNESS: Okay.

17

18

THE COURT: The jury has to strain their ears to hear, and you can speak louder than that, please do it.

19

20

MR. YOUTT: Get back to me with your voice.

21

22

23

24

25

THE WITNESS: Well, what I basically did over there, I took care from the time the shipment came in the warehouse till the shipment went out of the warehouse. That means to say, if we had to unload trucks, we unloaded trucks. If we put away the stuff, we put away the stuff. If we had to make orders, we

26 1

S. Werberger-direct

2

made orders out of everything that had to be done in the warehouse.

3

4

5

Q Did you have anything to do with the paper work, and again, please keep your voice up.

6

7

8

9

10

A Well, paper work -- only from, only to the office, upto the office. I take the trucker's papers and make a tally and take it up to the warehouse, to the office warehouse, and from there on the office, the guy in the office took care.

11

12

Q Have you dealt with money in wrappers, Mr. Werberger?

13

14

15

A Money in wrappers, no.

16

17

A Because I never dealt with money without wrappers, that's big money which they're talking about.

18

19

20

21

Q Okay. When you, and you heard Mr. Kahan testify about the Star of David; would you tell me what your understanding of the Star of David, the significance as to people in the Sachtma sect?

22

23

24

25

A The Sachtma sect?

Q You're in the Sachtma sect?

A Yes, I am the Sachtma sect.

Q Do you use the Star of David in any religious --

1 A We don't use the Star of David in any of our
2 religious things.

3 Q And what do you understand the reason for that
4 to be?

5 A Yes. We don't, don't use the Star of David in
6 our religious things.

7 Q Is it because --

8 A Because it symbolizes.

9 Q Is it because it is for only religious purposes
10 by your people?

11 A Yes, it's used -- it's a holy thing and was
12 used for other purposes by the Israeli Government, that's why
13 we don't use it.

14 Q And I take it your established religious
15 practices are about the same as those which were outlined by
16 Mr. Kahan?

17 A Yes.

18 Q And Mr. Moishe Werberger is your brother; is
19 that correct?

20 A Yes.

21 Q And the established practices are essentially
22 the same too; is that true?

23 A Yes.

24 Q Now, Mr. Werberger, you have heard testimony
25

S. Wercberger-direct

about some shipments of goods starting in February of 1975, a shipment of Whitehall Products and Anacin, and it has been some testimony about it.

Directing your attention back to February of 1975; were you aware that Anacin and Whitehall Products had been received by the CBS Warehouse?

A Not when it came in, but when it was after it went out, I find it was in there.

Q Do you know how long it was in the warehouse?

A I think about two days.

Q So I take it that you didn't have any idea that that particular, that particular quantity of goods was stolen, or in any way not properly owned by whoever purported to own it?

A I didn't know it was there.

Q Now, there was a Schick shipment of Schick Products which we're on trial here for, one of which came in on March the 12th 1975.

Did you expect that shipment of Schick Products before it arrived?

A No.

Q At the time that the Schick Products arrived on March the 12th, were you at CBS Warehouse?

A I wouldn't recall if I was there when the

29 1

S. Wercberger-direct

2

shipment came in, but I was there when the shipment, when the
3 truck was there, and while they're being unloaded. And,
4 while probably they unloaded it, right.

5

6

Q Did you supervise in any way the unloading of
the truck?

7

A Supervise unloading, maybe, yes.

8

Q Did you help them unload the truck?

9

A Maybe help unloading, too.

10

Q Do you know anybody by the name of Jimmy Santa?

11

A No.

12

Q Or Manny Gomez?

13

A No.

14

Q Or Stanley Diamond?

15

A No.

16

Q Or Frank Joseph Maloney?

17

A No.

18

Q Do you know that that shipment of Schick

19

products that came in on March the 12th 1975 was stolen as

20

alleged-in this case?

21

A Now?

22

Q Did you know at that time?

23

A At that time, no.

24

Q Did anybody offer to sell you those products

25

that came in on March the 12th 1975?

S. Werchberger-direct

A No.

Q Did you do any business with buying and selling products out of the CBS Warehouse?

A Not at all.

Q With respect to the shipment of March 13, 1975, were you on the CBS Warehouse premises when that second shipment of Schick Products came in?

A Yes.

Q And where were you at the time that they arrived?

A I wouldn't exactly recall where I was when the shipment came in, but I was there when the shipment was there.

Q And when you say the shipment was there, you were there when the trucks were there?

A I was there when the trucks were there, right.

Q Were you there when the first truck arrived before the two vans arrived?

A I was there when the trucks arrived, not when the trucks arrived, but I was there when the truck was there and I was there when the vans were there.

Q Were you there when the vans were parked over in the car parking area?

A Yes. I wouldn't know exactly where they were, but I remember they were there, the vans were there.

31 1

S. Werchberger-direct

2

Exactly where they were, I wouldn't know.

3

Q Did you go with your brother to look in and

4

see the contents of those vans?

5

A I wouldn't recall that.

6

Q Did you help to unload the shipment that came

7

in on the 13th of March of Schick Products?

8

A Yes.

9

Q What did you do; if you recall?

10

A You help, it's like I'm actually like the guy

11

like Fisher, I do everything. I do upstairs, I do the down-

12

stairs. If you need to take away a pallet you take away it.

13

If you need to take it away, pick it up, I pick it up,

14

whatever has to be done you do and that's what I did.

15

Q Who told you what to do?

16

A Well, I knew what to do.

17

Q And when you -- I take it when you took the

18

pallets up, did you drive the hilo machine?

19

A I would drive not only this particular case,

20

I wouldn't recall, but I do basically everything there

21

besides in the office. I wouldn't be too much involved in

22

office work, but everything in the warehouse I would be

23

involved in. Like you know, stacking and making orders, and

24

taking care of trucks, ingoing shipments and outgoing

25

shipments.

32 1 S. Werberger-direct

2 Q And when you worked there in the warehouse --
3 strike that.

4 On March the 13th 1975, do you remember what was
5 done with the Schick Products when they were taken off the
6 trucks in the two vans; where they were put immediately
7 after they came off the truck?

8 A They lined up on the platform.

9 Q On pallets?

10 A Pallets, right.

11 Q Who was there at the time from the CBS Warehouse?

12 A I think we were all there. I mean, when I --
13 see, Mr. Fisher who worked there and me, and my brother and
14 Mr. Kahan.

15 Q Were the pallets taken upstairs as they were
16 taken off or were they kept all together until the shipment
17 was completed?

18 A Well, usually stuff, if the elevator is busy
19 and we don't hold up the elevator because we don't, because
20 the elevator is doing some other business or outgoing
21 shipments, instead of holding the elevator because the
22 elevator, if it's in like say from nine pallets, I look to
23 take some time, and you know, so we wouldn't put it in the
24 pallets into the elevator, because you don't want to hold up
25 the elevator for other shipments coming in or going out.

33¹

S. Wercberger-direct

2 So, what we do is we would keep the whole
3 shipment, a lot, a whole shipment downstairs first before
4 they finish. After they finish, they send the whole thing
5 up as a whole.

6 Q Do you remember exactly what you did on March
7 the 13th with the Schick Products?

8 A Well, I lined them up on the platform.

9 Q You lined them up on the platform?

10 A I mean, it was lined up. I wouldn't know if I
11 lined it or helped to line it up, or it was lined up exactly.
12 Now, if I would have been there and work had to be done, I
13 would have done it.

14 Q Did you help to move the pallets then, from the
15 platform up to the upstairs, into the warehouse on some time
16 on March 13th?

17 A I wouldn't recall, but I think I did it. I
18 don't know, I wouldn't recall if I was there; I probably did
19 it.

20 Q Do you know where the pallets went, whether
21 they went to the fourth floor?

22 A Yes.

23 Q And the fourth floor is the floor on which your
24 offices are located; is that right?

25 A Yes.

34

S. Wercberger-direct

Q Did you help in any way to unload the pallets from the fourth floor March the 13th?

A I wouldn't recall that.

Q Did there come a time on March the 13th when you left the CBS Warehouse premises before the time that the FBI arrived?

A Yes.

Q You returned sometime later in the afternoon?

A Yes.

Q And when you returned, the FBI was there; is that right?

A Right.

Q With respect to the shipment that came in on March the 13th of Schick Products, did you know that those goods were stolen at the time that you, that it is alleged in this case, at the time that you were receiving them, being loaded off the trucks and onto the platform?

A No.

Q Did you know that they were stolen while they were in your possession?

A No.

Q Did anybody ever offer to sell you those Schick Products?

A No.

35 1

S. Wercberger-direct

2

MR. YOUTT: I have no further questions at this
time, your Honor.

4

THE COURT: Mr. Corcoran?

5

CROSS-EXAMINATION

6

BY MR. CORCORAN:

7

Q Mr. Wercberger, you were secretary of the CBS
Warehouse, Incorporated in March of 1975?

9

A That was my title, right.

10

Q And you also worked in the warehouse; is that
correct?

12

A Yes.

13

Q And you were familiar with the fact that the
Schick Products were coming into your warehouse on the 12th
and 13th of March, 1975?

16

A I was familiar that they were coming in, and
that they did come in.

18

Q Did you share in the decision making process
at the premises with your brother and Chiam Kahan?

20

A Yes.

21

Q Do you discuss business with them?

22

A Yes.

23

Q Have you ever seen these documents before?

24

A The first document I recall I saw. That was
the 1,654.

25

S. Wercberger-cross

MR. YOUTT: That's Exhibit 2.

MR. CORCORAN: Exhibit 2.

THE WITNESS: Yes.

Q Did you see that on March 12, 1975?

A I think so, yes.

Q And were you aware at the time of the number of cartons of Schick Products coming into the warehouse?

A Yes.

Q Did it correspond with the document you have before you?

A No.

Q Did you accept the cartons anyway?

A I accepted the cartons, yes.

Q Are you familiar with the other document, Government Exhibits 6 and 10?

A Well, I saw them afterwards, but I don't recall seeing them at the time, on that day.

Q You were away from the warehouse, is that correct, on the afternoon of the 13th?

A Yes.

Q And you left the warehouse before the FBI entered the premises?

A Yes.

Q Did you call the warehouse during the afternoon

1
2 at any time?

3 A No.

4 Q Did you speak to your brother or Mr. Kahan at
5 any time before you returned to the warehouse?

6 A No.

7 Q Is it your testimony that you were not aware
8 that the FBI was on the premises before you arrived back at
9 CBS?

10 A Say that again?

11 Q Is it your testimony that you were not aware
12 that the FBI was on the premises before you returned to the
13 premises?

14 A They called me in my house, that I should come
15 over.

16 Q Who called you?

17 A The FBI.

18 Q About what time was it, Mr. Wercberger?

19 A About, maybe about 4:30 or 5:00 o'clock.

20 Q And did they tell you they were interested in
21 the Schick Products?

22 A No, they told me to cover over, that's all.

23 Q Did you speak to your brother at all when you
24 spoke to the FBI?

25 A When I came back, if I spoke to my brother, I

38 1 S. Wercberger-cross

2 wouldn't recall, because when I came in they actually jumped
3 on me, so I mean I had a chance to talk to them but not
4 before I saw the FBI.

5 Q The FBI called you at home, told you they were
6 at the warehouse?

7 A Yes.

8 Q Did you communicate that to someone at CBS
9 before --

10 A Well, I told my wife the FBI was at the ware-
11 house and I had to go back there.

12 Q Did you tell anyone else?

13 A No.

14 MR. CORCORAN: I have no further questions.

15 THE COURT: Anything further?

16 MR. YOUTT: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. YOUTT:

19 Q Did you make any calls to Manny Gomez on the
20 afternoon of March 13, 1975?

21 A No.

22 Q Did you make any calls to Jimmy Santa in the
23 afternoon of March 13, 1975?

24 A No.

25 Q Did you make any calls to Stanley Diamond on

39 1

S. Wercberger-redirect

2

the afternoon of March 13, 1975?

3

A No.

4

Q Do you know these individuals?

5

A No.

6

Q Did you know them on March 13, 1975?

7

A No.

8

MR. YOUTT: No further questions.

9

THE COURT: Anything further, Mr. Corcoran?

10

MR. CORCORAN: No, your Honor.

11

THE COURT: You may step down. Is that the

12

defendant's case?

13

MR. YOUTT: There's a possibility of more

14

witnesses and it will not take more than 15 minutes to

15

testify, if he does appear. I would request an

16

adjournment for a day, and an opportunity to present

17

that witness if he does appear, on Monday, otherwise

18

that's the case and it will be over within 15 minutes,

19

if the witness does testify.

20

MR. CORCORAN: Your Honor, I would have one

21

rebuttal witness here, and another possibly on Monday.

22

THE COURT: Well, do you want to wait until

23

Monday for him?

24

MR. CORCORAN: Whatever suits your Honor.

25

MR. YOUTT: I would have no objection to going

40 1 slightly out of order, as long as I have the order to
2 present this witness.

3 THE COURT: It's up to you, Mr. Corcoran?

4 MR. YOUTT: The witness I might represent is
5 not over, rather was not an employee or an individual
6 witness of the events that occurred within this case.
7 I don't think it would affect his rebuttal in any way.

8 MR. CORCORAN: I have no objection to putting
9 on one witness at this time, your Honor. I call Agent
10 Patrick Colgan.

11 THE COURT: You are still under oath.

12 P A T R I C K C O L G A N , having previously been
13 duly sworn by the Clerk of the Court, resumed the
14 stand and testified further as follows:

15 DIRECT EXAMINATION

16 BY MR. CORCORAN:

17 Q Agent Colgan, calling your attention to
18 February the 4th or 5th of 1975, I believe you testified
19 earlier that you had occasion to go to the CBS Warehouse for
20 the purposes of seeking out and seizing quantities of Whitehall
21 Laboratory Products?

22 A That's correct. I believe I was there on both
23 days, February 4th and February 5th.

24 Q And at that time, did you have a conversation
25 with the defendant, Mor Werchberger?

41 1

Colgan-direct

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25

A I can definitely state on February 4th I would have had a conversation with Mr. Mor Wercberger.

Q Would you tell us what you told Mr. Wercberger at that time, with respect to the Whitehall Products?

A We were conducting an investigation in the immediate vicinity of CBS Warehouse, and actually it was at a nearby warehouse.

Q What warehouse was that?

A That was Able Warehouse, which is located at 42nd and 1st Avenue, in Brooklyn, and CBS is located at 50th Street, a short eight blocks away, and 1st Avenue in Brooklyn.

MR. YOUTT: I object and ask the testimony be stricken as irrelevant.

THE COURT: Strike out the testimony that the witness was conducting the investigation at the Able Warehouse, it has nothing to do with this case.

(Continued next page)

PK/tk

Colgan - direct

13

Q Did you proceed to the CBS Warehouse?

A Yes, I did.

Q And did you meet with Mr. Mor Werchberger there?

A Yes, I did.

Q Would you tell us the conversation, if any, you had with him that day?

A I informed Mr. Werchberger that myself and the other agents with me were conducting an investigation as to the theft of Whitehall products, consisting of Anacin tablets and various cosmetics, and that our investigation had led us to assume that part of this merchandise that had been stolen was currently located in the CBS Warehouse.

Q And did you obtain permission to search at that time?

A I informed Mr. Moische Werchberger that he had a constitutional right to demand a search warrant, and subsequently, I requested a consent search from him and he readily agreed to show us the premises.

Q Did you find the Whitehall products in question in the warehouse?

A Yes. We did, we found them in various sections of the warehouse. However, Mr. Moische Werchberger did take us to those sections.

Q What, if anything, did you tell Mr.

Colgan - direct

Mor Wercberger about the products when you discovered them?

A That they were identifiable to us as a stolen shipment that I had previously mentioned to him.

Q And did you indicate that you were going to seize them?

A Yes, I did.

Q As stolen goods?

A I informed him that these were the products that were definitely stolen, and that I had the legal obligation to seize these goods. However, since there were so many tablets and cartons, I myself, or even the other agents, would have to physically remove them from the premises at that time.

Q Subsequently, you removed them?

A We removed them subsequently, but at that time we photographed the products as they were in the CBS Warehouse.

Q Are you positive that you told him at the time that they were stolen?

A Absolutely. I informed him even before we found them, why were there and that we were looking for stolen Whitehall products.

Q Now, calling your attention to March 13, 1975, you conducted a search at the CBS Warehouse for a quantity of Schick products; is that correct?

Colgan - direct

A That's correct.

Q When you arrived on the scene, was Mr. More Werberger present?

A I have to clarify my answer by stating, when we arrived at the CBS Warehouse, and presented our identification to the individual at the platform, Mr. Moische Werberger was not there. And, approximately fifteen to twenty minutes later, when we were able to get the elevator to get upstairs, Mr. Moische Werberger was present.

Q And when you say he was not there, you are referring to not being on the platform?

A He was not on the street level platform that I saw.

Q When you arrived upstairs, he was present?

A That's correct.

Q Did you observe him coming in when you were on the platform?

A No. To the best of my knowledge, that is the only entrance to the elevator.

Q And you didn't observe him coming in while you were waiting for the elevator?

A No, I did not.

Q And he was there when you arrived upstairs?

A That's correct.

Colgan - direct

Q When you arrived upstairs on the 13th of March, 1975, did you have occasion to have a conversation with Mr. Chiam Kahan?

A Yes, I did.

Q And would you tell us what you said to Mr. Kahan and what he said to you?

A I believe the first contact I had with Mr. Kahan was after the actual search of the premises, and after we had found the stolen Schick products. It was conducted in their small offices in the CBS small office on that particular floor that we were on, and I am not sure, but I think it was the fourth floor of the building.

Q Specifically, what if anything did you say to Mr. Kahan about those products, and what did he say to you?

A I asked Mr. Kahan about the Schick products and he informed me that there was a delivery of Schick products on the previous day, March 12, 1975, of 1,673 cartons. Mr. Kahan stated that the merchandise was brought in by the International Trading Company, a firm that he was not familiar with, but that a firm he was told was contacted through Mor Wercherger and that Mor was familiar with the outfit, and had the paperwork for that shipment.

Q Did he tell you how many cartons had come in on the 13th?

Colgan - direct

A He told me there was around 3,032 cartons of the same products, delivered by the same firm, he said International Trading Company on the 13th.

Q Now, Mr. Kahan told you there were 1,673 on the 12th?

A That's correct.

Q Was there ever any documentation to that effect?

A No. It was just a verbal statement to that figure of 1,673.

Q And he told you a specific number of cartons on that day?

A Positively.

MR. CORCORAN: Thank you, I have no further questions.

THE COURT: Mr. Youtt?

MR. YOUTT: One moment, your Honor, please.

No questions.

THE COURT: You may step down. Thank you.

We will suspend at this time, and of course, there will be no court tomorrow, don't come in tomorrow. The case will continue on Monday, promptly at 10 o'clock.

I expect that the case will finish and that we will sum up and in all probability I will charge the jury on the applicable law, and I may very well keep

1
2 you late on Monday.

3 What's been going through my mind is what I
4 would do if the case went over to Tuesday, and I will
5 tell you something about my problem.

6 I have a Chief Judges' meeting, all of the
7 Chief Judges of the Court meet periodically with the
8 Judicial County Seat of the Circuit on Tuesday, which
9 I believe the date is the 25th, and it is usually a
10 long meeting, it takes a good part of the day. I'm
11 scheduled to get there at 10 o'clock, but I probably
12 won't be there until 11 A.M., and usually I'm an hour
13 late, so that means that I usually cannot get back until
14 2:30, and maybe 3 o'clock.

15 The reason I'm telling you all this, is so that
16 you understand the reason that I will keep you Monday,
17 until we have a verdict. The normal practice in this
18 Court is to usually discharge the jury at about 6 or
19 7 o'clock, and then bring the jury back the next
20 morning in the event they don't arrive at a verdict.
21 I may, if you don't arrive at a verdict on Monday, ask
22 you to come back and to continue your deliberations
23 at 3 o'clock in the afternoon, or 2:30 in the afternoon,
24 rather than have you come in and wait for me, because
25 sometimes there are questions that a jury has during
deliberations, and you'll be asking questions and nobody

1 will be here to answer it.

2 So, I'm letting you in on what I'm thinking,
3 and I think the best way is to handle it that way.

4 So, for now tell the folks at home that there
5 is a probability that you'll come home very late on
6 Monday. I'll try to avoid this if I can, and then if
7 I ask you to come back at 3 o'clock on Tuesday, I
8 don't want you to think I'm just playing games, golfing
9 or doing something else, it's just that as Chief Judge
10 I do have some administrative responsibility, and it
11 does interfere sometimes with trials once in a while.

12 So, from now on you understand that you are not
13 to talk about the case, please don't discuss it at
14 home, and when you assemble on Monday, again get into
15 the courthouse at about 9:30 or twenty of ten, and I
16 expect to continue the case promptly at 10 o'clock
17 on Monday.

18 The jury is excused, have a nice weekend.

19 (The jury left the courtroom.)

20 THE COURT: I wanted you to know the problems,
21 because I have a matter and I wanted to take that up
22 tomorrow, but again, seeing that we have orthodox Jews
23 here, and they can't stay beyond 3 o'clock, so I
24 adjourned the matter until Tuesday, and for the moment
25 I forgot, I thought I had a charge on this for Tuesday.

8 1 but I have another matter which is quite complicated,
2 which involves a judgment on a permanent injunction in
3 a civil matter, and sitting here I realize that I was
4 scheduled to be at the Chief Judges' meeting, and I
5 might say that I cut short my last meeting and got back
6 here before the Judges' councils met, and I don't
7 know whether it would be a proper thing to do, but I
8 really would rather not do it twice in a row.

9 So, I will have to wait until the District
10 Council meets, and they do start out about 2 o'clock,
11 so I can't expect anything before 3, and that's my
12 problem.

13 Now, if I can get a verdict on Monday, fine,
14 but this is the kind of case where the jury deliberations
15 could take an extensive period of time, we will start
16 at 3 o'clock on Tuesday and it might go for three
17 hours, and then if we don't have a verdict on Tuesday,
18 well, then, we could continue on Wednesday.

19 I have a non-jury case that I can deal with
20 the jury at that time, so that's the problem that we
21 have in this court, and that's the way it stands.

22 Now, we had a request to charge which was
23 supposed to be here this morning?

24 MR. CORCORAN: Yes, your Honor.

25 THE COURT: How about you?

1
9 MR. CORCORAN: I have something here, your
2 Honor, but I'm sure this doesn't require the jury being
3 here, but just for the record I would like these marked
4

5 THE CLERK: Government's request for charges
6 marked Court's exhibit number 1, and the defendant's
7 request to charge is marked Court's exhibit number 2.

8 THE COURT: I trust that each party has served
9 the other party with a copy of requests to charge?

10 MR. YOUTT: Yes, your Honor.

11 MR. CORCORAN: Yes, your Honor.

12 THE COURT: I appreciate your doing this.

13 Monday morning when I ask whether we have any
14 objections, I will expect each one shall have their
15 objections ready as to the requested charges, and then
16 we can note the objections and I will rule on those
and it will save a lot of time.

MR. YOUTT: Fine.

19 THE COURT: Thank you, gentlemen, I shall see
20 you on Monday.

21 * * *

22

23

24

25

1 UNITED STATES DISTRICT COURT
2
3 EASTERN DISTRICT OF NEW YORK

4 -----x
5 UNITED STATES OF AMERICA, :

6 -against- :

7 CHIAM KAHAN, SOLOMON WERCBERGER, :
8 MOR WERCBERGER, :

9 Defendants. :
10 -----x

No. 75 CR 762

11 United States Courthouse
12 Brooklyn, New York

13 January 24, 1977
14 10:00 O'clock A.M.

15 B e f o r e :

16 HON. JACOB MISHLER, CHIEF U.S.D.J.
17
18
19
20
21
22
23

24 PAUL KLIMASZEWSKI
25 Acting Official Court Reporter

2

APPEARANCES:

DAVID G. TRACER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: PAUL CORCORAN, ESQ.,
Assistant US Attorney

H. E. YOUTT, ESQ.,
Attorney for Defendants

1 3 THE COURT: Case on trial, United States against
2 Kahan, Solomon Werchberger, Mor Werchberger.

3 Bring the jury in.

4 Were you here when I sent my courtroom deputy in
5 with menus for the jury?

6 MR. CORCORAN: Yes, I was.

7 THE COURT: All right, I wanted to make sure.
8 (Whereupon, at this time jury was seated.)

9 THE COURT: Good morning, ladies and gentlemen.
10 I think we're ready to start.

11 Mr. Youtt?

12 MR. YOUTT: Your Honor, I call at this time
13 Dr. Marvin Schick.

14 D R . M A R V I N S C H I C K , called as a witness,
15 having been duly sworn by the Clerk of the Court
16 was examined and testified as follows:

17 THE CLERK: Would you please state your name
18 and spell it for the record.

19 THE WITNESS: Marvin Schick, S-c-h-i-c-k.

20 THE CLERK: Be seated, please.

21 DIRECT EXAMINATION

22 BY MR. YOUTT:

23 Q Dr. Schick, what is your position with the Schick
24 Razor Blade Company?

25 A None whatsoever.

1 4] Schick-direct

2 Q You're not related in any way to the Schick
3 Company; is that correct?

4 A No, sir.

5 Q What is your present position, Dr. Schick?

6 A I teach political science at two universities,
7 on the graduate faculty of the School for Social Research
8 and Hunter College.

9 Q You are a Doctorate in the political science
10 field?

11 A Yes, I am.

12 Q And are you engaged in any specialty within the
13 field of political science at the present time?

14 A Yes. At present, my two specialties are ethnic
15 politics and urban politics.

16 Q Would you briefly describe what ethnic politics
17 is?

18 MR. CORCORAN: Your Honor, I would like to
19 object.

20 THE COURT: Objection sustained.

21 MR. CORCORAN: I ask for an offer of proof.

22 THE COURT: Is this a character witness?

23 MR. YOUTT: No, your Honor.

24 THE COURT: The jury is excused.

25 (The jury leaves the courtroom.)

5

Schick-direct

THE COURT: I'll take an offer of proof,
Mr. Youtt.

MR. YOUTT: Your Honor, Dr. Schick sat as an
administrative assistant to Mayor Lindsay, and in the
position he was concerned with dealing with various
minority groups in the City of New York, specifically,
various Jewish groups and organizations in the city.

He's an expert in the field of political science,
focusing on the ethnic minority and specialty Jewish
groups. He also is a writer who wrote for a weekly,
a weekly column for a newspaper, focusing upon Jewish
affairs, who is here to testify today about the
practices and mores and standards of the Satmar
community, especially concerning their abstinence from
all mechanical activities and business activities on
Saturdays, and also, the question of significance of
the Star of David as it applies to members of the
Satmar religion.

THE COURT: Objection sustained. I'll charge
them and take judicial notice of the practices of
Jews, that they do not take part in any activities on
Saturdays, their Saturdays are devoted solely to prayer.

MR. CORCORAN: Your Honor, that would be up until
Sunday or --

6

Schick-direct

THE COURT: Yes, until Sunday. You will be excused in the presence of the jury, wait.

Seat the jury.

MR. YOUTT: Your Honor, wait. One other thing, I don't know if my final witness is here, I have spoken to Mr. Corcoran about the possibility of a stipulation at avoiding putting him on the stand. He is a Mr. Dorrio from, I think Bankers Trust Bank; he's under subpoena to be here at 10:00 o'clock, I spoke with him on Friday myself, but apparently, he's not here.

My assistant is in the hallway, waiting for him. It's not a major sort of a matter, I don't know if it's possible --

THE COURT: What will the stipulation be?

MR. YOUTT: I tender a proposed stipulation, that Mr. Dorrio whose name appeared on the back of one of the Government's exhibits was a banker who Mr. Mor Werchberger contacted in connection with the obtaining of financing for an automobile that he applied to purchase on March the 13th, 1975. He did not subsequently purchase that automobile, and the loan was not consummated.

THE COURT: What has that got to do with the

7

Schick-direct

case?

MR. YOUTT: The only thing it has to do with it, your Honor, is that the name of a banker appeared on a piece of paper that listed one of the loads in question here, the inference is possible without his testimony, or without the stipulation that Mr. Dorrio was a banker for the \$400,000 in order to purchase the stolen shipment of Schick products.

THE COURT: You'll have to say that again.

MR. YOUTT: It seems that a reasonable inference which could be drawn, and I would like to explain that the name on a banker on a list of goods that were received on Parch the 13th, which were obtained from Mr. Mor Werberger's pocket, it could indicate a possibility that there was a banker who was to loan Mr. Werberger \$400,000 to purchase the ship load.

What I want to establish is that the name of the banker was there on that particular piece of paper because he was being contacted in connection with the obtaining of an auto loan.

THE COURT: Why can't you stipulate that Mr. Werberger was about to buy a car and he had contacted Mr., whatever his name was, what was that name?

8

Schick-direct

MR. YOUTT: Dorrio.

THE COURT: At the Bankers Trust.

MR. YOUTT: I think that's --

THE COURT: Why should he have to come here?

MR. CORCORAN: I have no objection to stipulating that. We can stipulate this is an application for the car he was going to purchase that day and the loan did not go through and the car was not purchased.

THE COURT: Well, would you stipulate that the gentleman who was to testify on that loan had no connection with any other loans?

MR. YOUTT: That is the fact.

THE COURT: Then why does he have to testify to it?

MR. CORCORAN: I would stipulate that Mr. Dorrio would testify that Mr. Mor Werberger contacted him on the 13th of March in connection with an automobile loan, which loan was not consummated.

THE COURT: It highly unlikely for anyone to get financing for a load of this stolen merchandise.

MR. YOUTT: I understand that, your Honor, but this was the name of a person on the back of a piece of paper and he was cross-examined on that.

9

Schick-direct

THE COURT: All right. I don't see the harm, I don't see why it should come before us, and Mr. Corcoran indicates he is willing to stipulate to it.

MR. YOUTT: I appreciate that.

THE COURT: Seat the jury.

MR. YOUTT: Thank you, your HONor.

(Jury enters jury box.)

MR. YOUTT: May I just step out and inform my assistant that he may send Mr. Dorrio home?

THE COURT: Yes. Mr. Schick was about to testify, among other things, that as a practicing Jew, he would not engage in any activities of any kind, except that dedicated to the devotion to his religion on the Sabbath, and that the Sabbath commences sundown on Friday and ends on sundown on Saturday, and instead of the testimony I take judicial notice of that, so you are excused, thank you, Mr. Schick.

THE WITNESS: Thank you.

MR. YOUTT: Thank you, Doctor.

May I have a word with Mr. Corcoran?

THE COURT: Sure.

Would you repeat your stipulation and conform to it, that if Mr. Dorrio were called to testify, he would testify that he is a banker with the Bankers Trust

10

Schick-direct

Company, that on or about March 13, 1975 he was contacted by Mr. Mor Werchberger in connection with obtaining an auto loan, which auto loan was not consummated, did not go through at a later time, and was not contacted for obtaining finances for other purposes of any kind; do you concede that?

MR. CORCORAN: So stipulated, your Honor.

THE COURT: Is that the defendant's case?

MR. YOUTT: Just one moment, your Honor, if I may.

Your Honor, a matter which is pending on Friday concerning some supporting documents for defendant's exhibit O which has been submitted into evidence, and Mr. Corcoran would like to examine Mr. Mor Werchberger on it, and I would like the opportunity to call him to the stand, to submit the supporting documents so that Mr. Corcoran has an opportunity to cross-examine, if he wishes.

THE COURT: You say they're not in evidence?

MR. YOUTT: They're supporting evidence, which is not in evidence at this time, Exhibit O is in evidence.

THE COURT: Do you object to this supporting document going in?

11

Schick-direct

MR. CORCORAN: No, your Honor. I would offer them if Mr. Youtt were not putting them in.

THE COURT: Okay.

MR. YOUTT: May I recall Mr. Mor Wercberger to the stand?

THE COURT: Surely, but there is no objection, as I understand, Mr. Corcoran has no objection to having it marked in evidence.

MR. CORCORAN: That's correct, your Honor.

THE COURT: Let them be marked, and we will call Mr. Mor Wercberger; that won't preclude it.

Will you please resume, Mr. Wercberger.

THE CLERK: A five page document marked Defendant's Exhibit P in evidence, and a one-page document marked Defendant's Exhibit Q in evidence.

THE COURT: You may resume. You understand you have been previously sworn and you still are under oath, or affirmation?

THE WITNESS: Thank you.

12

Wercberger-direct

M O R W E R C B E R G E R , having been previously called
as a witness, was examined and testified further
as follows:

DIRECT EXAMINATION

BY MR. YOUTT:

Q Mr. Wercberger, I'm handing you Defendant's
Exhibit O, which is a bill of lading reflecting one trailer
load of miscellaneous that we talked about on Friday; do
you recognize that?

A Yes.

Q Now, I'm handing you defendant's Exhibit P which
has just been marked and accepted into evidence; do you
recognize that?

A Yes.

Q What is Defendant's Exhibit P?

A The packing list of the shipments.

Q Now would you tell me whether, when you received
Defendant's Exhibit O, you also received Defendant's Exhibit P
or did it come at a different time?

A Well, I wasn't there at the time.

Q Do you recall whether you received, whether
your company, CBS, received Defendant's Exhibit O and P at
different times?

A I don't remember.

13

Wercberger-direct

1

2

Q Answer the question?

3

A I don't remember.

4

Q Is there a signature on Defendant's Exhibit O?

5

A Yes.

6

Q Whose signature is that?

7

A Fisher.

8

Q I'm now handing you Defendant's Exhibit Q; what

9

is that?

10

A That's a receipt, warehouse receipt.

11

Q And the Defendant's Exhibit P and Q are documents

12

which are the supporting documents that Mr. Corcoran called

13

for on Friday?

14

A Seems like it.

15

Q Are there any interim inventory cards which you

16

have concerning that particular shipment in your files, that

17

you were able to locate over the weekend?

18

A Could you repeat that?

19

Q Are there any internal inventory cards similar

20

to the card for the shipment of the Schick products that you

21

have been able to locate over the weekend?

22

A Well, I didn't look for it exactly, but it

23

probably is.

24

Q You did not look for the internal cards?

25

A For the inventory card, I did not.

1 14

Wercberger-direct

2 Q With respect to Defendant's Exhibit P, are those
3 sheets of paper signed in any way by an official of the CBS
4 warehouse?

5 A Those signatures are not known to me.

6 Q And where is the name of the CBS warehouse, in
7 which way does that appear on Defendant's Exhibit P?

8 A No.

9 Q What name appears as the consignee, or a location
10 of the shipment of goods?

11 A It's consigned to Shapecraft Corporation, care
12 of National Distribution Services.

13 Q And if you know, what is National Distribution
14 Services?

15 A I don't know.

16 Q Does a review of those documents refresh your
17 recollection in any way as to whether or not Exhibit P or
18 the shipment went to National Distribution Services rather
19 than CBS?

20 A It may have been assigned to, originally, to
21 National.

22 Q And when you say assigned, what do you mean by
23 assigned?

24 A It was supposed to go probably to National,
25 before it came to us.

1 15

Wercberger-direct

2 Q Do you recall whether the documents in Exhibit B
3 were documents that you received at some point?

4 A Yes.

5 Q When did you receive those documents?

6 A Well, it came after to help us try to make up,
7 itemize the load.

8 Q You said that Exhibit P came after to help you
9 try to itemize the load that was reflected in Exhibit O?

10 A Yes.

11 MR. YOUTT: I have no further questions.

12 THE COURT: Any questions, Mr. Corcoran?

13 MR. CORCORAN: Yes, your Honor.

14 CROSS-EXAMINATION

15 BY MR. CORCORAN:

16 Q Mr. Wercberger, your testimony then is that the
17 document marked Defendant's Exhibits P and Q were documents
18 that pertain to Defendant's Exhibit O; is that correct?

19 A Probably, yes.

20 Q Now, you indicated the other day this was
21 another document at CBS warehouse wherein it was an instance
22 of one trailerload of miscellaneous which was accepted; is
23 that correct?

24 A Right.

25 Q What's the date on Defendant's Exhibit O which

16

Wercberger-cross

would indicate the date you received that document?

A 17th.

Q 17th of what?

A February, 17th, '75.

Q And this is a more detailed listing of everything that came in on that same shipment; is that correct?

A Yes.

Q And what's the date on the top of that document, sir?

A February 13th, '75.

Q February 13th?

A '75.

Q And the one page document is February 17th; is that correct?

A Right.

MR. CORCORAN: May we have that marked as a Government's exhibit?

THE CLERK: One page document marked Government's Exhibit 29 for identification.

Q Mr. Wercberger, you testified -- withdrawn.

You heard the stipulation earlier, did you not?

MR. YOUTT: Objection, your Honor, not within the scope of direct examination.

THE COURT: I'll allow it.

17

Wercberger-cross

Q You heard a stipulation earlier, did you not, that the name Dorrio on one piece of paper found in your wallet related to a banker whom you had contacted on March 13, 1975, in connection with an automobile loan; is that correct?

A Yes.

Q And you know Mr. Dorrio?

A Yes.

Q And did you, in fact, sign a contract to purchase an automobile on March 13, 1975?

A I did again, right.

Q I show you what's been marked as Government's Exhibit 29, Mr. Wercberger, and ask if you can identify that document?

A Yes.

Q What is it sir?

A It's an order for the car, or a purchase.

Q And did you, in fact, order the car indicated in that document on March 13, 1975?

A No. This was an alternate that I took.

Q Did you sign that document on March 13, 1975?

A Yes.

Q What kind of a car did you order, according to that document, sir?

A In 1975, a Lincoln.

18

Wercberger-cross

Q A Lincoln Continental?

A Right.

Q What was the total purchase price of the car you ordered on that day, sir?

A This wasn't ordered on this day.

Q What was the total purchase price of the car that's indicated in that document?

A \$9707.

Q Nine thousand seven hundred seven dollars?

A Right.

Q And it was with reference to that you were making a bank loan; is that correct?

A No, for this particular car.

Q Are you saying that you didn't sign this on March 13th, 1975?

A I didn't say that, I said I signed it.

Q And this indicates how much cash on delivery, sir?

A Seven seven oh seven.

Q And how much cash deposited?

A Two thousand.

Q Did you in fact purchase this car?

A What's the question?

Q Did you purchase this, did you pay this nine thousand seven hundred dollars for this car sometime after

1 19 Wercberger-cross

2 March 13th?

3 A No.

4 Q Did you cancel it?

5 A I couldn't cancel it, but the loan didn't come
6 through.

7 MR. CORCORAN: I have no further questions.

8 THE COURT: Mr. Youtt?

9 MR. YOUTT: I have some questions, your Honor.

10 REDIRECT EXAMINATION

11 BY MR. YOUTT:

12 Q Mr. Wercberger, did you visit Mr. Dorrio at the
13 Bankers Trust Company on March 13, 1975?

14 A No.

15 Q When did you visit him?

16 A After or before?

17 Q Let's start when you first applied for the
18 automobile loan?

19 A About March the 7th.

20 Q And after you saw Mr. Dorrio on March 7th, did
21 you have any further contacts with him on the telephone?

22 A Yes, the whole week.

23 Q And did you visit anybody in connection with the
24 purchase of an automobile on March 13th, 1975?

25 A Yes. The car dealers.

1 20

Werberger-redirect

2 Q And there came a time later when you cancelled
3 the loan, it didn't come through; is that correct?

4 A Yes.

5 Q How did you learn of that?

6 A The bank told me.

7 Q Mr. Dorrio or someone else?

8 A Mr. Dorrio.

9 Q Do you know when that was?

10 A On or about the preceding Monday or Tuesday.

11 Q So it was March the 7th, the day that you went
12 to apply for the loan, was that the day you decided to purchase
13 an automobile?

14 A I had ordered the car, before that.

15 Q You ordered a car?

16 A Yes.

17 Q What was it, the same car?

18 A Not the same car, because that car wasn't there
19 yet, it was another Lincoln.

20 Q Was it the same dealer?

21 A Same dealer, right.

22 Q When did you first go to order a car?

23 - A I don't remember the date.

24 Q You never purchased the Lincoln Continental; is
25 that correct?

21

Wercberger-redirect

A No.

THE CLERK: Two-page document marked Defendant's Exhibit R for identification.

Q I'm handing you what's been marked as Defendant's Exhibit R for identification. Would you tell the Court and jury what those two pages are?

A One is a trucker's bill of lading, the other one is the warehouse receipt.

Q The trucker's bill of lading is dated what date?

A 1-4-73.

Q and on 1-4-73, did you receive a shipment that's reflected on the trucker's bill of lading?

A Yes.

Q I take it, incidentally, that particular shipment also did come from the files that you described and testified to on Friday?

A Yes.

Q How is that shipment described?

A It says, "One trailer".

Q One trailer; who is the shipper?

A The shipper is Cadillac Imports.

Q Is the consignee named?

A CBS Warehouse.

879a

22

Wercberger-redirect

Q Is this a shipment that was purchased for the CBS Warehouse?

A No.

Q So this is another example of an unaddressed consignee, and an unnamed consignee and an example of the use of the designation, "one truckload"; is that correct?

A Yes.

Q Are there further documents fully describing or more fully describing that particular load in your records and files?

A Yes. The company warehouse receipt and inventory cards.

Q Any card or any receipt or papers which were received from the shipper?

A No.

MR. YOUTT: I offer Defendant's Exhibit R in evidence, your Honor.

MR. CORCORAN: No objection, your Honor.

THE COURT: Let it be marked.

THE CLERK: Defendant's Exhibit R previously marked for identification is now marked in evidence.

Q Mr. Wercberger, incidentally, where were you when you learned that the FBI was at the premises of the CBS Warehouse?

23

Wercberger-redirect

A At a car dealer.

Q At a car dealer?

A Right.

Q How did you learn that the FBI was at the premises of the CBS Warehouse?

A We called.

Q What did you do?

A We called in to ask what's new, and they told us, because it was the end of the day, and they told us the FBI are here and we cannot talk anymore, come right over.

MR. YOUTT: May I have this marked?

THE CLERK: Photograph marked Defendant's Exhibit S for identification.

Q Mr. Wercberger, handing you what's been marked as Defendant's Exhibit S for identification, would you tell me what that is?

A That's the picture of the back side of the building.

Q That's the entrance in the rear that we said there was testimony about on Friday?

A What Friday?

Q Is that, directing your attention to the lower right-hand corner of the photograph, is that photograph of the entrance to the CBS Warehouse?

24

Wercberger-redirect

A One of the entrances to the warehouse building.

Q Is that the entrance that was upstairs by the truck in the other photographs?

A Yes.

Q Does that fairly and accurately depict that particular rear entrance with the overhead door?

A Yes.

MR. YOUTT: I offer Exhibit S in evidence.

THE COURT: Show it to Mr. Corcoran.

MR. CORCORAN: I have no objections.

MR. YOUTT: I have no further questions at this time, your Honor.

THE CLERK: Defendant's Exhibit S previously marked for identification is now marked in evidence.

MR. CORCORAN: Your Honor, I would like to offer at this time Government's Exhibit 29.

THE COURT: Any objection?

MR. CORCORAN: Into evidence.

MR. YOUTT: Yes, your Honor, irrelevant.

THE COURT: There is an objection?

MR. YOUTT: Yes, irrelevant.

THE COURT: Overruled. I'll allow it only because the witness testified with relation to it.

Anything further, Mr. Corcoran?

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Wercberger-redirect

MR. CORCORAN: I have no further questions.

THE COURT: You may step down.

THE CLERK: Government's Exhibit 29 marked
for identification now marked in evidence.

THE COURT: Is that the defendant's case?

MR. YOUTT: Yes. The defense rests.

THE COURT: Any rebuttal?

MR. CORCORAN: No, your Honor.

THE COURT: The jury is excused.

(Whereupon, the jury left the courtroom.)

THE COURT: Mr. Youtt; do you have any motions?

MR. YOUTT: Yes, your Honor.

I would renew all of my motions previously
made, and also, on the same grounds without fruther
argument that I previously stated to the Court,
with one exception.

I would also renew my motion to strike the
testimony of Mr. Cogar, as I indicated before, on the
grounds that it has not been established by independent
evidence that Mr. Diamond was a member of the conspiracy.
Further, I would again restate my objection to
Mr. Cogar's testimony, Mr. Diamond's particular testimony
upon the grounds that at least in some instance of
that testimony, it did not involve statements which

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Wercberger-redirect

were made in furtherance of or during the course of the conspiracy, specifically Mr. Diamond's statement to Mr. Cogar concerning whether or not the people that were arrested were real rabbis. Clearly, Mr. Cogar was not part of that conspiracy and anything that Mr. Diamond may have said to him was clearly not in furtherance of it.

I would ask, specifically, not having enunciated this precisely before, that that particular aspect of the testimony be stricken and the jury be ordered to disregard it, and other than that, I renew all of the motions previously made at the close of the government's case.

THE COURT: Motion in all respects denied.

MR. YOUTT: I also, Your Honor, I believe you indicated that we were to discuss at this point some of the aspects of our respective requests to charge?

THE COURT: That's what I'm ready to go over. Have you gone over the requested charges?

MR. YOUTT: Yes, I have Your Honor.

THE COURT: When I grant a request, it only means I agree with the principle, it does not mean I will charge in the language requested.

Tell me what you have objections to?

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Werchberger-redirect

2 MR. YOUTT: Your Honor, I have a specific
3 objection and to start, I have no objection to the
4 number one. I object to number two, Your Honor. The
5 objection is based upon the fact that I objected to
6 the singling out of the defendant.

7 THE COURT: I agree with the principle but
8 I will not charge it. That means I'll allow you to
9 argue it.

10 I will not say that the greater interest of
11 the defendant is the strongest temptation to lie.

12 MR. CORCORAN: Your Honor, you will not
13 charge that but we are permitted to argue it?

14 THE COURT: Sure, that's right. You can
15 point to the greatest interest, sure, I think that
16 is argument. The general principle is that they may
17 take it into consideration, the interest of witnesses
18 and the outcome of the case and if you want to
19 extend that to the defendants and talk about the
20 personal interest, you certainly can, but I will
21 not charge it.

22 MR. YOUTT: I object to request number 3,
23 Your Honor, I think in those rare instances where
24 it's been established that something that the
25 defendant said, other than a denial of guilt is

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Werberger-redirect

incorrect or false, the government may be entitled to that kind of a charge. The false statement to an FBI agent may be some evidence of guilt, but if in a situation like this we have merely a denial of the substantive crime of the knowledge of possession, that thereby utilizes that evidence as evidence of guilt, which is improper and would be a prejudicial charge, and I request it not be given.

THE COURT: What exculpatory statements do you say was made by Mr. Mor Werberger?

MR. CORCORAN: Your Honor, the statement that these goods were received in the ordinary course of business from a trucker that brought them off the street, and producing documents in support of that, our argument is that those documents show this transaction was not in the ordinary course of business, that this was a false exculpatory statement.

I have no objection to taking out the words, "at the time of their arrest".

THE COURT: I wouldn't use the form anyway, I've got a much more comprehensive statement. No, overruled. I'll allow it. I can see where the government might argue that when Werberger told the FBI agents that it was just routine, that the

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Wercherger-redirect

2 government may argue that it was not routine, and
3 he made that statement for the purpose of exculpating
4 himself. Next?

5 MR. YOUTT: Your Honor, with respect to
6 request number six.

7 THE COURT: You say 4, 4 and 5 are all right?

8 MR. YOUTT: 4 is what I've addressed, I'm
9 sorry. 4 is, I do not object to it.

10 THE COURT: 5?

11 MR. YOUTT: 5, I would only request an
12 additional aspect of the charge, that the defendants
13 have presented testimony which if accredited by the
14 jury constitutes an --

15 THE COURT: I won't use this, but I'll deny
16 the charge because I don't think it's prima facie
17 of guilt, and I think there is a difference between
18 being permitted to draw an inference from a recent
19 possession of stolen goods and finding that it's
20 prima facie evidence. The inference may be drawn
21 is discretionary, and if I hold the prima facie
22 evidence then it calls upon the defendant to overcome
23 it. I think there is a big difference.

24 MR. CORCORAN: Your Honor, wouldn't it be
25 better couched in terms of a presumption?

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Werberger-redirect

THE COURT: No, I'll not use a presumption either. I will say to the jury, that among inferences that you may draw, is the inference of guilt from recent possession of stolen merchandise. You may find from the facts of recent possession of recently stolen merchandise, that the defendants or the accused knew that the merchandise was stolen, and I will go into what recently means, and I may even say that the more recent it is the stronger the inference.

So, I'll deny the request as made by the government. Next, in six, you start to talk about, I find some fault with the wording, there was only one claim of a prior similar act and you've got engaged in other transactions, similar to those charged. I'll give limiting instructions and tell them that if they find that the government proved that prior to this time, and I think it was in February, that the defendants knowingly possessed stolen merchandise, then they may use that testimony for limited purposes of determining whether this merchandise was held with criminal intent, but that they cannot convict the defendant on the charge in this document because they believe on other

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Werberger-redirect

occasions they committed a crime.

Do you agree with that?

MR. YOUTT: I can accept that, Your Honor, much easier than I can accept the request number six.

THE COURT: I mean do you agree with the charges as I have paraphrased it?

MR. YOUTT: Yes, I do.

THE COURT: All right, and seven; do you agree with that?

MR. YOUTT: I don't object to seven.

THE COURT: In other words, all the government will prove is that the goods were moving interstate commerce, they need not prove that the goods were moving in interstate commerce.

MR. YOUTT: Yes, knew they were stolen.

THE COURT: Yes.

MR. YOUTT: I would object to number eight, Your Honor.

THE COURT: Well, there is a more recent case than eight, I'll agree I was looking at the opinions over the weekend and it just reaffirms the principle there in the United States against Handleman. I believe it's number 408, which was

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Wercberger-redirect

decided on January 18, 1977, which was what, less than a week ago.

It's a well-known principle, as a matter of fact, Judge "Pollick" was criticized in that case for using reckless disregard; I'd never use that, but they didn't even find that was a reversible error, but I in general, charge that if the defendants knowingly and intentionally avoided learning facts that would lead them to the information that the goods were stolen, and he's chargeable with criminal intent if he knew something like that.

(cont'd on next page.)

1 MR.YOUTT: Your Honor, my only objection --

2 THE COURT: It has to be a knowing and
3 deliberate avoidance.

4 MR. YOUTT: In the case where there is clear
5 evidence that the person was closing his eyes to the
6 obvious, there appeared to be in Joyce and in cases
7 which support the Joyce principle, then I would have
8 no objection. But, I will contend in this case you
9 have a denial of guilt, and circumstances where the
10 inference is either that he should have known, he did
11 know and is guilty, or he didn't know, as he has
12 testified.

13 I would suggest that a loosely-applied Joyce
14 interpretation would impose the conscious avoidance
15 rule in every case, where the person denies knowledge
16 of the stolen nature of the goods.

17 THE COURT: No, no, that isn't true. That's a
18 third alternative, depends on how you read the evidence.

19 The jury may very well believe that these
20 defendants, in fact, did not know it wasn't brought
21 consciously to their attention, that these were stolen
22 goods. Nobody said, "We hijacked these goods," but
23 from all the circumstances they felt it might very well
24 be stolen goods, and they refused to ask questions,
25 they accepted the documents, realizing that had they

1 looked beyond the substance of the documents it would
2 show that the goods were stolen, and I think this is
3 just that type of case where the charge is appropriate.
4 The document on its face may look very proper, but
5 show that the goods came through legitimately, but
6 looking behind the document or just making any
7 perfunctory investigation might disclose that the goods
8 were stolen, and I think that it is instance on which
9 the charge is appropriate.

10 Now, do you find anything wrong in any of the
11 defendants' request?

12 MR. CORCORAN: Yes, your Honor.

13 I have no objection to requests numbers one and
14 six. However, I do have difficulty with the others and
15 I would object to them, in part at least.

16 THE COURT: I found nothing wrong with the --

17 MR. CORCORAN: Your Honor, there are portions
18 of the remaining ones that I have objections to.

19 THE COURT: You agree they're correct in their
20 principle?

21 MR. CORCORAN: Well, I have to look through them
22 one at a time, but in request number two, for example,
23 I would object to chargin the jury that the defendant
24 warehousemen were not required by law to investigate.

25 THE COURT: I'm not going into that detail, the

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3 defendant can argue it but it's true, ins't it?

4 MR. CORCORAN: I don't believe it's true, your
5 Honor. Well, the Uniform Commercial Code may not
6 require under the facts and circumstances here
7 presented to the defendant they would be under an
8 obligation to make a determination --

9 THE COURT: How deep must the investigation go
10 before they may accept goods without the risk of being
11 charged?

12 MR. CORCORAN: A very surface investigation in
13 this case would result in their conclusion that the
14 goods were not legitimately offered for storage, and
15 they have an obligation in certain situations not to
16 accept the goods, that is in issue, where it is clear
17 that the goods are stolen goods.

18 So, I think the law does impose an obligation
19 under certain circumstances.

20 THE COURT: The obligation not to commit a crime?

21 MR. CORCORAN: Correct.

22 THE COURT: Here we're coming back to what you
23 talked about, consciousability.

24 MR. CORCORAN: Correct.

25 THE COURT: I find nothing wrong with it. I
won't charge them in the language, but you certainly
can argue it.

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MR. CORCORAN: Request number three, the second sentence, however, in determining whether a particular defendant was a member of a conspiracy, if any of the jury should consider only his act and statements, I don't believe that's correct. Other evidence of a man which can be convicted of a conspiracy on purely circumstantial evidence, there might be no evidence of any statement that he made himself, and there also might be no evidence that --

THE COURT: None at all?

Well, if I felt that way in the case, I'd dismiss the indictment on count number one.

MR. CORCORAN: I think it would depend upon how strong the evidence was.

THE COURT: It must be what we call independent evidence, independent of the act and declaration.

MR. CORCORAN: That's true, your Honor. I'm not saying that we rely only on co-conspirators' statements and acts.

THE COURT: That's all he's saying.

MR. CORCORAN: But the defendant himself can be found guilty of having acted without showing direct evidence of an action on his part.

THE COURT: No, I won't charge that. I am going to charge that they must show, the Government

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2 must show beyond a reasonable doubt that this
3 defendant, or the accused, knowingly and wilfully
4 entered into the conspiracy, and that means that he
5 participated in it, realizing that the goods were
6 stolen.

7 MR. CORCORAN: I agree with that, your Honor.

8 THE COURT: But his act is testimony of what he
9 did.

10 MR. CORCORAN: What I'm trying to suggest, this
11 act can be established by circumstantial evidence as
12 opposed to --

13 THE COURT: Give me a for instance.

14 MR. CORCORAN: The defendant is in possession
15 of the goods, that is circumstantial evidence that he
16 has possession of them, and he took possession of them.
17 It's not direct evidence, we don't have testimony that
18 says, "I carted the goods in," myself, on the 12th.

19 THE COURT: No, that's on a different principle,
20 because of his direct possession which is the direct
21 evidence, and if you want me to charge actual
22 constructive possession, if you want me to charge
23 jointly and several possessions, I will. I didn't
24 think of doing it, but I'll do it if you want.

25 If he actually had possession, from that
possession, possession of recently stolen goods, the

1 inference can be drawn that he participated.

2 MR. CORCORAN: I would ask for a charge, then,
3 on the constructive act, a constructive possession.
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5 THE COURT: But you agree that you can't
6 connect the defendant with the conspiracy by hearsay
7 evidence?

8 MR. CORCORAN: I agree, your Honor, but in
9 context it seems to me to be suggesting that we have to
10 have direct testimony that he said, "I'm a member of
11 this conspiracy," or he actually, he was observed doing
12 specific acts.

13 THE COURT: Mr. Youtt doesn't strike me as
14 being that naive, or I don't think that's the point he
15 broaches. You don't say we could have that question?

16 MR. YOUTT: Absolutely not, your Honor.

17 THE COURT: No.

18 MR. CORCORAN: On request number four, I would
19 object to that, yes.

20 THE COURT: Yes, that's the point that Mr. Youtt
21 was expressing.

22 MR. CORCORAN: Correct.

23 THE COURT: And I sustained the objection to
24 that, that I didn't mark it at all, waiting until I
25 heard what you had to say.

MR. CORCORAN: The Verilli case is quite

7 1 distinguishable from this case.

2 THE COURT: Right, now what's wrong with five?
3 That comes right out of McDevitt and Blackman, and the
4 inference that a particular defendant is guilty of
5 conspiracy should not literally be drawn from the mere
6 fact of meetings between or among the co-conspirators.

7 MR. CORCORAN: I have no objection to that,
8 your Honor.

9 THE COURT: Certainly not, there are partners
10 in business. My God, you can't draw an inference of
11 wrongdoing from being together and discussing their
12 business.

13 MR. CORCORAN: That's correct, your Honor.

14 With regards to jury instruction number seven,
15 I would object to the last paragraph only if, well,
16 let me say on that request that it be supplemented by
17 an instruction that the arrest does not necessarily
18 terminate a conspiracy.

19 I believe Mr. Youtt is suggesting there that
20 statements made after the defendants were arrested
21 cannot be considered against them, and I think it's for
22 the jury to consider what constitutes termination.

23 I request that the jury be instructed that
24 arrest doesn't necessarily constitute such termination.

25 THE COURT: Now, I forgot whether I had, that was

1 what I was going to charge on, termination being a
2 fact question. I think I said, but I don't think I
3 said it to the jury. Did I say it to the jury? Yes.
4

5 Well, I'll know best. The question to the jury
6 is to when the conspiracy ended, that's a fact question
7 and I will tell them after the conspiracy ends, of
8 course, one participant cannot bind another.

9 Are we now ready?

10 MR. YOUTT: Yes, I have nothing further.

11 THE COURT: Seat the jury.

12 How long do you expect to be on your summation,
13 on your first summation?

14 MR. CORCORAN: I would think probably twenty
15 minutes to a half hour, your Honor.

16 THE COURT: We might very well get them all in
17 then by lunch hour.

18 Seat the jury.

19 (The jury enters the courtroom.)

20 THE COURT: All right, sir.

21 MR. CORCORAN: Chief Judge Mishler, Mister Youtt,
22 Mr. Foreman, ladies and gentlemen of the jury:

23 At this time counsel are given an opportunity
24 to give their summations, that is, we are permitted to
25 argue to you what we believe the evidence in the case
establishes.

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2 What I say is not evidence. What Mr. Youtt
3 says is not evidence. The evidence that you must
4 consider is the evidence that you've heard over the
5 last week, the testimony from the witnesses that took
6 the stand before you, the exhibits that were introduced
7 into evidence in this case. It is those exhibits and
8 that testimony which constitute the facts or the
9 evidence on which you must establish the facts.

10 It is your job as the trier of the facts to
11 determine what, in this case, the facts really are.

12 The tools which you take into the jury room to
13 make your determination are your common sense and
14 experience.

15 Our entire judicial system is based on common
16 sense and experience of the jurors that make the
17 determination, not the facts as the lawyer sees them
18 or the facts as the judge sees them, but the facts as
19 you see them that control this case, as in every other
20 case. It's your recollection of those facts that
21 controls this case.

22 I would avoid summarizing the evidence that you
23 have heard, but since we have had a three-day layoff
24 over the weekend, it's been some time since you've
25 heard the bulk of the evidence. I'll give you what my

Corcoran - summation

recollection of the facts are, in summary fashion however, we'll see if it fits with your recollection and you are in control.

The charge here is that the defendants, Mor Wercherger, Chaim Kahan and Solomon Wercherger participated in the conspiracy to possess and to receive and possess the quantity of Schick shaving products which were stolen from interstate commerce on March 11, 1975. The second charge is that the defendants, Mor Wercherger, Chaim Kahan and Solomon Wercherger did, in fact, possess the goods stolen from interstate commerce knowingly and wilfully on March 13, 1975.

The Government has brought before you witnesses who testified as to certain facts at that time. The evidence is that this conspiracy began even before the hijacking. Mr. Paul Polari and, we will evaluate the evidence here.

We heard Mr. Polari, who told you that approximately at 7:30 or 8 o'clock on March 11th, about an hour or an hour-and-a-half before the truck was even taken, that he received a call from Jimmy De Filippo, who told him there was going to be work for him in the morning. De Filippo said,

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Corcoran - summation

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Jimmy Santa told him to call.

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An hour and a half later, Carroll Bridgeforth and James Lester were driving a Time DC trailer truck, 1047, from Connecticut to Virginia, while on its way to California, were hijacked in New Jersey.

Mr. Bridgeforth told you that as he was driving along route 80 and 287 in New Jersey, this tractor trailer was pulling over to the side of the road, or forced over to the side of the road by an automobile containing four individuals. That the individuals got out of the car, that they were masked; he didn't see their faces, they were armed. And they took Mr. Lester from the car, from the truck, and took the truck from Mr. Bridgeforth.

Mr. Bridgeforth told you that this appeared to be the car in Government's exhibits 7 and 7-A, photographs which appeared to be the car which was used. He read a couple of digits of the license plate, but he didn't remember the entire license plate number. He told you that this occurred about 9 o'clock on March 1 and that he was held for over three hours and he and Mr. Lester were released on Staten Island, taken interstate, released on Staten Island sometime after midnight, in the early morning hours of March 12, 1975

Corcoran - summation

Mr. Bridgeforth told you that about two and a half hours into that car trip, while he was being held captive, as he was lying on the floor in the back of that car, he could hear over the blaring radio a conversation between the two hijackers in the front seat. He told you that the conversation took place after they made a short stop, a minute or a two-minute stop, and he told you the conversation was to the effect, that one man got back into the car after that brief stop said to the other man, "The buyer is well satisfied with the load."

Two and a half hours after the hijacking, the load was already sold.

Approximately 11:30 at night, Mr. Polari, he told you that he was contacted even before the hijacking, told you that the next morning he was picked up by Jimmy De Filippo and Paddy De Filippo, and Manny Gomez, and that's the name to remember, and he was taken out to a lot, which is in Government's exhibit 9 in evidence, a photograph of that lot, where he found a time DC trailer, number 1047, loaded with Schick shaving products, and that it was Jimmy De Filippo and Paddy De Filippo and Manny Gomez, and Mr. Polari aided in the unloading of the truck on the morning of

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the 12th, a few hours after the hijacking.

They loaded two rental trucks, one was taken to S and F warehouse, the other to CBS warehouse; that they were taken there without documentation.

Mr. Polari indicated that this is the document he was given by Jimmy Santa in going to S and F. He didn't see the documents going to CBS that day. He told you that he informed the FBI of the fact. He learned then from Agent Dowd and Colgan, the events of the 13th, he told them as he saw them.

Agents Dowd and Colgan told you what happened out at the CBS Warehouse on the 13th, that pursuant to the information that Mr. Polari had given them, they set up a surveillance at the CBS Warehouse on the next day, to see if the goods were going in, and on the 13th of March, Mr. Dowd told you that he observed the defendants, Mor Werberger, Chaim Kahan and Solomon Werberger, meeting with Manny Gomez and Polari on the loading dock of CBS, and they observed the Schick shaving products being unloaded into the CBS Warehouse.

Agent Dowd further told you that two vans arrived after the truck and that Mr. Werberger, Mr. Werberger and Mr. Kahan went over to the vans and

Corcoran - summation

examined them, looked inside of them, and the vans were then unloaded into the CBS Warehouse.

Mr. Polari told you that after unloading the truck and vans into the warehouse on the 13th, he and Gomez and the other people left and went back to Tommy Reel's house, which is depicted in Government's exhibit 12 in evidence, and that in Tommy Reel's house in the card room, which you heard about also from Mr. Cogar, he met with Jimmy Santa, Joe Deluca and both Defillippos immediately on return after unloading the trucks. And what was said to him, Jimmy Santa told Pollari at that time, an hour and a half after leaving the warehouse, that the FBI hit that warehouse ten minutes after you left. Within an hour or an hour and a half, the hijackers were aware that the FBI was in the CBS Warehouse.

(continued next page)

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Corcoran - summation

MR. CORCORAN: (continuing) Mr. Pollari told you that he was an informant, has an informant status and was also known to the defendants, and that he said to Jimmy Santa as anyone in that situation would, "do we have to worry, do we have any problems?" And Mr. Santa, Jimmy Santa was the man that unloaded the truck shortly after the hijacking said to Pollari, "don't worry, it's on their end." You've heard from Tommy Cogar, Cogar, another government informant, a man who infiltrated this hijacking organization that was operating out of Tommy Reel's house, a man who is acting as an agent for the government at the time, the same time as Mr. Pollari was working for a different agency and unaware that Mr. Pollari was also an informant.

Mr. Cogar told agents Bratten and Rizzuli about these evnts as they happened. Mr. Cogar testified and told you that on March the 13th or March the 15th, rather, he was present in the Lefferts Dress Shop which is run by his father-in-law, when there was a meeting between Jimmy Santa, Stanley Diamond, Paul Vary, Jr., Manny Gomez, and Mr. Santa was reading a newspaper and pointing out an article to Mr. Diamond of the hijacking that had

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1 een detected the day before, the razor load, which
2 peared in the newspaper on the 14th, and they were
3 discussing that hijacking and discussing that article.
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5 Mr. Santa said to Mr. Diamond, "what do you
6 think about the rabbis?" I should say at this point,
7 anything that's said here is in reference to the
8 statement of these individuals during the course of
9 this hijacking, and the reference to rabbis is not
10 intenden as any slur on the status of these
11 individuals or anything else, it happens to be the
12 testimony, and it's only for that reason that we
13 referred to the defendants as rabbis at the time.
14 Mr. Santa said to Mr. Diamond "what the rabbis", and
15 Stanley Diamond said to Mr. Santa, "don't worry,
16 they're stand-up people."

17 The day after the hijacking, or the day after
18 the arrest after the goods were found in the CBS
19 warehouse, Mr. Santa, the man who was first to be in
20 the position as far as the truck is concerned, said
21 "what about the rabbis" and he is told that they're
22 stand-up people. Mr. Cogar told you that he relayed
23 that information to agent Gratten and he told you
24 also that a few days later while they were playing
25 cards, which they apparently did on a daily basis when

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Corcoran - summation

they weren't hijacking trucks, Mr. Santa and Mr. Diamond had another conversation in which Mr. Santa expressed his concern for the payment of the load, were they going to be paid and Mr. Santa indicated that he was going to meet with the rabbis on the following day to get the rest of the money. He was going to meet with them a week after the hijacking to get the money.

Mr. Diamond indicated to Mr. Cogar after Santa left the room, they weren't really rabbis, they were Orthodox Jews with the hats and the beards. He indicated to Mr. Cogar whom he didn't know was a government agent, that the money they had already received for the load had been received in hundred dollar bills bearing the Star of David.

You heard testimony further in the summary from an FBI handwriting expert who told you that the documentations that went into S&F and CBS warehouse on March 12th and 13th were written by the same hand and then the documentation that had gone into the CBS warehouse with the load of Whitehall products 5 weeks earlier was also written by the same individual. That, related of course, to the testimony of Mr. Colgan who told you that

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Corcoran-summation

1 five weeks before, finding Mr. Mor Werberger,
2 Mr. Chiam Kahan and Mr. Solomon Werberger in possession
3 of the Schick products, they found a load of stolen
4 Whitehall Products in possession of the same defendants
5 and, this documentation, Government's Exhibit 6 has
6 been produced by Mr. Werberger at that time. The
7 handwriting experts said yes, it's the same handwriting,
8 the same individual that did the handwriting and paper-
9 work on the Schick load.
10

11 And finally, you heard some testimony from the
12 company people involved that these are in fact the
13 stolen products. Mr. Strickland told you, based on the
14 number the cartons contain from the CBS Warehouse on
15 March 13th, based upon the product numbers which are
16 the identifying numbers of those products, he could say
17 that these were, in fact, the products that went out
18 on tractor trailer number 1047 on March the 11th
19 destined for California, Schick Products that never
20 arrived at their destination.

21 Your job then is to evaluate that testimony, to
22 apply your common sense and experience to that testimony
23 as well as the testimony of the defendants about the
24 goods in question, as to whether those stolen products
25 were taken from this CBS Warehouse, and were in fact

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Corcoran-summation

stolen from interstate commerce. I don't believe that there will be much dispute over that point. Mr. Strickland had no reason to lie to you when he told you that the cartons taken out matched identifying numbers to those on the truck and he had no reason to lie to you.

We know from Mr. Pollari that they were taken from the tractor trailer which Mr. Bridgeforth said was his trailer, and I don't think there is any question that the Schick Shaving Products were moving in interstate commerce when they were taken from Mr. Bridgeforth and Lester, and that these Schick Products were in possession of one Solomon Wercberger and Chiam Kahan on the 13th of March.

I don't believe there will be much dispute as to that, the FBI and Mr. Walsh of Time DC told you they took the 5,072 cartons out of the CBS Warehouse. The question then is what was the rule of these gentlemen, Mor and Solomon Wercberger and Chiam Kahan in the crime.

Let's evaluate it, first of all, the evidence you heard from Mr. Pollari and Mr. Cogar. It's clear from Mr. Bridgeforth's testimony that the conspiracy involved the taking of the truck, the receipt of these

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Corcoran-summation

goods began before the hijacking itself. Mr. Pollari was contacted prior to the hijacking. The buyer of the product, according to the hijacker's statement, knew the product and accepted them virtually almost immediately after the hijacking occurred, within a matter of two and a half hours a truck in New Jersey was taken somewhere and examined either by the individuals who saw the goods that night or the hijackers examined them and compiled a list and made a telephone call.

I suggested to you, they went down Route 80 or the George Washington Bridge, and it had to be somewhere in some privacy, possibly not to have gotten to this yard in Brooklyn, New York, that kind of a transaction, the sale of a truckload of stolen goods at 11:00 o'clock at night, I suggest to you ladies and gentlemen required some preliminary arrangements to even locate a buyer and it would require more than two and a half hours. The individual who bought this load would have to have been aware of it and had to have been on hand before.

Who were the buyers, who were the buyers that approved of the load while Mr. Bridgeforth and Mr. Lester were still being held captive? I suggested to you,

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Summation-Corcoran

ladies and gentlemen, that you need only look to the events shortly after the hijacking to understand who the buyers were. Understand that Mor and Solomon Wercberger and Chiam Kahan were the buyers of the stolen load because where does the goods go immediately after the hijacking? Into the possession of these defendants.

The defendants have told you that they were innocent warehousemen, that they accepted the goods as they would any other goods in the ordinary course of business. You have to evaluate those statements in light of the facts that you have heard from the other witnesses. If there was a buyer arranged prior to the hijacking, the buyer referred to Mr. Bridgeforth, why did the goods go to the defendants the next day? The defendants are, in fact, are Orthodox Jews, with the hats and the beards, the Rabbis referred to by Mr. Santa, who erroneously was referred to by Mr. Santa, and also Mr. Diamond, those are the men who were in fact in possession of the load shortly after the hijacking.

Mr. Cogar testified that the Rabbis were meeting with the defendant a week and a half later to make a payment, that they made payments in hundred dollar bills. Ask yourselves, ladies and gentlemen, were these goods

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Summation-Corcoran

being stored or were they being purchased as payment made by a warehouseman to the person who put the goods in, or warehousemen who were the recipients of payments to store it? If Mr. Cogar and Mr. Pollari have testified truly, then those goods were being sold and they were being purchased by Orthodox Jews.

Consider Mr. Pollari's and Mr. Cogar's testimony because their testimony is somewhat important. Have they any motive to lie to you? Did they have any motive to lie to the FBI and a Strike Force Agent in 1975? Mr. Pollari and Mr. Cogar told you they didn't even know each other, they told you they didn't know the status of each other; they knew each other, Cogar said he knew Paul, but they had infiltrated the same group of hijackers but were working for other agencies, Cogar working for the Strike Force and Pollari for the FBI. They certainly weren't aware of the status of their informants which applied to each of them.

When Mr. Pollari related his information to the FBI on March 13th that these goods were being unloaded into the CBS Warehouse, had he any reason to lie, I ask you to judge that your common sense and experience. In Mr. Pollari's situation the information he was giving

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Summation-Corcoran

1 to the Bureau could be checked out immediately there-
2 after, and in fact, it was. Why Mr. Pollari told the
3 agents that he had put the stolen Schick Products into
4 S & F Warehouse and CBS Warehouse, that fact was
5 corroborated immediately thereafter by the seizure of
6 those goods from the places specified.
7

8 Mr. Pollari told you that Mr. Santa knew of the
9 seizure of those goods upon his return to Tommy Reel's
10 house. What motivation did he have to lie as to
11 that? I suggested to you, apply your common sense and
12 experience to the situation. He had known Mr. Pollari's
13 situation was one of the giving of information, and that
14 he had no reason to make anything up. Consequently,
15 you can rely on his testimony that those statements were
16 made, that when he got back to Tommy Reel's house shortly
17 after the hijacking and the unloading of the goods,
18 the hijackers already knew that the goods had been
19 seized. That leads to an interesting question, based
20 on Mr. Pollari's testimony who told the hijackers that
21 the goods had been received immediately after the
22 seizure.

23 According to the defendants, these goods had been
24 received from International Trading Corporation and
25 then the International Trucking Corporation. According

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Summation-Corcoran

1 to the defendants, they had no idea how to get in touch
2 with the people that put the goods in and yet somehow,
3 the hijackers knew of the seizure immediately after.
4 The only people in a position to inform the hijackers
5 were the men who knew the FBI was in that warehouse,
6 Mr. Wercberger, Mr. Kahan and Mr. Wercberger.
7

8 Tommy Cogar's testimony that Jimmy Santa and the
9 other co-conspirators in this hijacking discussed the
10 Rabbis and whether or not it would rely on them after
11 this arrest, whether or not they were stand up people,
12 people who would tell the authorities nothing. What
13 of Mr. Cogar?

14 Mr. Cogar was an informant. He wasn't an
15 accomplice in this case, he was an agent of the Govern-
16 ment supplying information, as it happened, on a daily
17 basis. What reasons did Mr. Cogar have to lie to
18 Gratten, what motivation did he have to suggest the
19 Rabbis had a load or purchased it.

20 Is there any corroboration of what Mr. Cogar said?
21 Well, yes. Mr. Cogar told you that in addition to
22 relating the information about the conversations of the
23 Rabbis, that he told AGent Rizzuli and Agent Gratten
24 about his conversation with Manny Gomez at that very
25 same time at Tommy Reel's house, and in that vicinity,

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Summation-Corcoran

1 Manny Gomez, the man that was observed delivering the
2 products to the CBS Warehouse, the man who Mr. Pollari
3 said unloaded the truck, Tommy Cogar told you that
4 Manny Gomez related to him that on March 12, 1975, he
5 had rented the car that was used in the \$500,000 score.
6 That he told Cogar, he told the agents that Gomez said
7 he had rented this car in his own name and it was used
8 in the razor job.
9

10 Ladies and gentlemen, Mr. Cogar's testimony about
11 Mr. Gomez was in fact corroborated. You have heard
12 testimony from Mr. Rosen of the National Car Rental
13 System and, lo and behold, Manny Gomez did rent a car
14 on March 10, 1975, a car that was due back to that
15 rental agency on March 12, 1975. What car was it?
16 The car that's depicted in Government's Exhibit 7 and
17 7A, the car Bridgeforth said appears to be the one used
18 in the hijacking of the Schick Products, rented by the
19 man who delivered those products into the hands of
20 these defendants.

21 I suggest to you, not only was there no reason
22 for Mr. Cogar to lie to the agents he was working with,
23 his testimony is corroborated. Yes, it didn't from the
24 co-conspirators in this case, he would have knowledge,
25 no knowledge of the cars used in the hijacking. You

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Summation-Corcoran

1 apply your common sense and experience to the testimony
2 of Mr. Cogar, Mr. Pollari, and you can consider that
3 testimony in connection with the observations of the
4 FBI agents and on that alone, ladies and gentlemen,
5 you have proof beyond a reasonable doubt.
6

7 I suggest that these defendants were involved in
8 the possession of the stolen goods knowingly and
9 wilfully. But, you need not only rely on the testimony
10 alone, there is corroboration by the defendants'
11 activities and statements on March 13, 1975. They
12 would have you believe they were merely innocent ware-
13 housemen storing these goods. Well, the documentation
14 that they presented to the FBI as justification of their
15 possession of the goods proves beyond a reasonable
16 doubt that they were not innocent warehousemen, and
17 corroborated the fact they purchased this load.

18 Mr. Mcr Wercberger testified and corroborated
19 agents' testimony that these are the documents that
20 he turned over. The documents in Government's Exhibit 2,
21 and Government's Exhibit 2 in connection with the
22 receipt of the Schick Products on March 12, 1975.
23 He corroborated Agent Colgar's testimony, and this
24 is the document Government's Exhibit 3 that he turned
25 over to the FBI in connection with the shipment of

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Summation-Corcoran

products he received on March 13th. Consider those documents, since it is conceded that these are the documents that are presented to the FBI in justification of his position.

March 12th, 1654 cartons, razors and blades. Now, Mr. Werberger would have you believe that he originally thought he was receiving a quantity of razor blades from Theresa Merchandising Company, but he learned when these razors and blades arrived on the 12th of March that they weren't from Theresa Merchandising Company. The bill of lading indicates from Schick, a standard form bill of lading, nothing on the top which indicates Warner Lambert or Schick Company, something that could be purchased in an office supply store; it says from Schick, 1654 cartons, destination CBS Warehouse and consigned to International Trading Company. Mr. Werberger would have you believe that he accepted the shipment of razors and blades knowing it wasn't from Theresa and thinking it was from International Trading Company, a company admittedly who had never done business with him before.

He told you that he was a warehouseman and that his job, his function, his service was to accept goods, store them and return them on request. He would have

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Summation-Corcoran

1 you believe on the 12th of March, 1975, he accepted
2 these products from a truck driver off the street on
3 this documentation. He told you he made an accurate
4 count because his liability depends upon it. He had
5 to return anything that was put into this warehouse
6 and if he didn't return it, he had to pay for it.
7 And, he indicated that this is the receipt he gave that
8 truck driver off the street from the unknown company,
9 Government's Exhibit 2A, consigned to International
10 Trading, one load of blades, Mor Wercberger, no carton
11 numbers, one load blades and he would have you believe
12 that he knew there were only 1606 cartons being received
13 at the CBS Warehouse on the 12th of March, but that
14 because he didn't want the truck driver to be short
15 because the truck driver was worried about what would
16 happen, he didn't put 1606 on the receipt and he
17 didn't put 1606 on the bill of lading. He just accepted
18 one load.
19

20 He told you there would be an argument later and
21 the problem would be resolved later. 48 cartons less
22 than the paperwork shows, 48 cartons of Schick products
23 less than the paperwork just described. If you did
24 a little mathematics of the value of this load,
25 \$405,000, you will find that 48 cartons, ladies and

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Summation-Corcoran

gentlemen, is worth somewhere in the vicinity of \$2500, and it could vary depending upon which products were missing, but Mr. Wercberger would have you believe that he accepted this shortage of 48 cartons from an unknown trucking company, not even knowing which cartons were missing. Could it have been the hot lather machine? Could it have been the twin double injector razors? Double edged razors? Super cartridge II's? He had no idea, but his testimony is that he accepted the 48 carton shortage so the truck driver wouldn't have any problem.

(Continued on next page)

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Corcoran - summation

MR. CORCORAN: (continuing) He indicated that he compiled the internal documentation on the 1,606 cartons that were received that day. Apply your common sense and experience to that story, the story that Mr. Werchberger has told you. Can you conceive of any businessman in any business accepting a shortage of this type? All they had to do was turn the driver away from the platform and say, "sorry, I'm not going to accept it. I'd be liable for 48 cartons." Or, simply make the simple notation on the bill of lading, 1,606 and avoid the liability.

But no, that was not done and I suggest to you, ladies and gentlemen, the reason it wasn't done was because there was no doubt when the truckdriver was on the premises, there was no knowledge on the part of the Werchbergers and Mr. Kahan when that truckdriver left that they were only 1,606 cartons that they accepted, they accepted that bill of lading because they were accepting a stolen load of merchandise and it made no difference to them how many cartons were in the load, because they didn't have to turn any over to the hijackers, they were paying for it. They were paying for the

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Corcoran - summation

load and three loads, the next day, and when you buy a truckload of hijacked goods a contract count is not necessary, it's only when you run a warehouse legitimately that you do have to know how many cartons that you can return them to the true owners. There was no need for Mr. Wercberger and Mr. Kahan and Mr. Wercberger to know how many cartons went into the warehouse on the 12th. They counted them afterward. I suggest to you, ladies and gentlemen, this documentation was done for two reasons.

One, because on February 5, 1975, the FBI entered their warehouse the day after they received the load of Whitehall products and the FBI had removed the products and they had already held up the story that they were innocent warehousemen once before and they could have very well anticipated the FBI appearing the day after the load came in, it happened once before. So, they would need paperwork to justify the goods they had in their warehouse, 1,606 was what they had. The bill of lading for 1,654 wouldn't wash, they had to have accurate papers in case the FBI appeared and seized those cartons for the second time in a month. The second reason for the documentation that was created

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Corcoran - summation

on the 12th, look, examine Government's Exhibits D, and Government's Exhibit E, and you can take these documents into the jury room, and then you yourselves, ladies and gentlemen, apply your common sense and experience as to what a warehouseman would have to do, a breakdown on a load like this, the number of cartons of different products, descriptions, super cartridge 2, super 2 razor blade kits, lather machines, refills - lemon lime. If they were storing one load for International Trading Corporation would they have any need to know what the specific items were or is this the kind of thing that a man that purchased these goods would want to know for future disposition?

Wouldn't a man who bought these goods want to know what kind of products he had so he could distribute them? These gentlemen as warehousemen would have absolutely no need for this information. So, ladies and gentlemen I suggest to you that when the truck left on March 12th there was no count because no count was needed. The determination was made afterwards to justify, to make it look lawful an otherwise unlawful possession of stolen goods.

What happened on the 13th? On the 13th rental

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Corcoran - summation

1 trucks appeared again, rental trucks not Schick
2 Product trucks, not Warner Lambert trucks, but rental
3 trucks appeared at the CBS warehouse and Mr. Mor
4 Werberger and Mr. Kahan and Solomon Werberger
5 accepted another quantity of Schick shaving products,
6 over 3,000 more of the stolen cartons, this time
7 with no bill of lading whatsoever, they accepted a
8 quantity of goods with no paperwork justifying the
9 goods being in their possession, and they would have
10 you believe, Mr. Werberger testified, that of
11 course it's an innocent warehouseman, he did an
12 accurate count on the 13th of March before accepting
13 those goods and he did it on the platform, an
14 accurate count, because his liability as a ware-
15 houseman would depend upon once again, an accurate
16 count which would be 3,032 and these are the only
17 documentations that these defendants have to
18 justify the possession of the goods accepted on the
19 13th of March. This is a receipt of their own
20 making which appeared to be the original in ink,
21 consigned to International Trucking, not International
22 Trading, not the same company that the goods the
23 day before were consigned to. This time the ship-
24 ment is consigned to International Trucking with no
25

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Corcoran - summation

address, and again accepted from an unknown company;
3,032 cartons.

Ladies and gentlemen, three loads, one truck
and two vans; apply your common sense and experience
to this documentation; ask yourselves whether
legitimate businessmen would accept liability for the
quantity of goods without a bill of lading and on
this documentation. Ask yourselves whether Mr.
Wercherger told you the truth when he said he
accepted these as a warehouseman and when he took
an accurate count a little arithmetic again, belies
everything that these defendants would have you
believe because they didn't accept 3,032 cases of
Schick products on the 13th of March, they didn't
count the products as if they were warehousemen,
they accepted them to be later returned to a true
owner. In fact, we knew from the Bureau that an
hour or so after they accepted these goods the
Bureau went in and took out 5,072 cases of these
stolen Schick products. Subtracting the 1,606 they
received before, you obtain a figure in excess of
3,500 cartons that went in according to their
testimony on the second day. They have some 434
more cartons in their warehouse than justified by

1 66
2 their documents, 1,606 and 3,032 which gives you
3 4,638 cartons and they had 5,072, ladies and
4 gentlemen. That's how accurate their count was,
5 that's how concerned they were about whether or not
6 they would be liable, because there was no liability.
7 There was no accuracy because they were dealing in
8 stolen goods, and all they were concerned with was
9 getting in the load and they happened to be concerned
10 with anybody coming back and claiming the 1,606
11 cartons and the 3,032. When they took these
12 documents they knew that no one was going to come
13 back for these goods at all.

14 Mr. Wercberger would have you believe that
15 they would have done internal documentation on the
16 second day's shipment. He was going to lump them
17 all together because he recognized one of the
18 truckdrivers from the 13th, that he was one of the
19 same people that had been there on the 12th, and
20 even though his documents indicate it was consigned
21 to a different person, he was going to lump it all
22 together and do all the paperwork later that day.
23 Ladies and gentlemen, ask yourselves then why this
24 list, the list which he said he is going to use for
25 his internal documentation was found folded in his

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Corcoran - summation

wallet on the 13th, not in his pocket as if he was going upstairs to hand it to the clerk to do the documentation, but in his wallet. No other documents in his wallet relating to any other goods in that warehouse, but this Mr. Werchberger had some concern for the produces he received from Schick, he had some reason to put that document in his wallet, 5,072 cartons on documents showing 4,600, and where are the other 400 cartons from and how do we know they didn't take the count, because they weren't warehousemen, they weren't warehousing these goods and the answer lies in Mr. Pollari's testimony.

Mr. Pollari told you that the goods that were taken to the S&F Warehouse the day before had not been put completely into the warehouse, that they had about a quarter of a truck load left and they took that truck load back to the lot where they were loading the truck full, they had the truck again completely full and they took that truck load to CBS on the next day. Mr. Pollari told you that the goods that they were suppose to go with the remainder of the goods, they were all suppose to go into the S&F Warehouse and instead were put into the CBS Warehouse, and nobody cared where they were.

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Corcoran - summation

1 The warehouseman didn't care, the hijackers didn't
2 care, the goods were being bought as a load, 400
3 cartons in excess of what they were suppose to
4 receive on the 13th. And, if you compare the S&F
5 documents, 2,150 to what Mr. Frank Walsh said he
6 took out, 782, you have the 400 extra cartons, the
7 cartons that went into the CBS Warehouse and you
8 have the proof that no count was made on the dock,
9 that the 3,032 cartons were not counted and that
10 Mr. Kahan and Mr. Werberberger didn't care.

11 This was not an ordinary warehouse transaction,
12 a legitimate transaction by these gentlemen is
13 clear when you compare their own exhibits to the
14 documents here in question. These are the
15 documents that Mr. Werberberger and Mr. Kahan and
16 Mr. Solomon Werberberger brought before you to prove
17 that this is the legitimate transaction as far as
18 they're concerned. Compare these documents. They
19 would have you look at the fact that there was no
20 address on the consignee, and I ask you instead
21 ladies and gentlemen to look at something far more
22 important on these documents, and that is that they
23 are liable to return the goods to the true owner.

24 The procedure they go through when they're
25

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Corcoran - summation

accepting goods as warehousemen rather than as coconspirators of stolen goods, each and every one of those documents has got specific carton numbers on them, and on each and every one of these documents the bill of lading has that carton number circled at the bottom with the signature of Chiam Kahan or Mor Werberger or Solomon Werberger. They counted these cartons and they put that figure on the bottom and they circled it. They made sure on each of these transactions that they received the right number of cartons, 86 cases of yarn, 86 with a circle and a signature. You can go through every one of these documents ladies and gentlemen, 8 or 12 cartons and then you have 8 or 12 circled with a signature. 12 cartons, 12 cartons with a signature of Solomon Werberger.

When these men had liability for storage they were very accurate as to what they were receiving, and here they didn't have to care. Compare all of the documents and you'll find nothing in the nature of this which they would have you believe is a lawful possession of the Schick products in question.

The documentation that they presented last week on Friday that is allegedly similar to the

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Corcoran - summation

Schick documents, compare it ladies and gentlemen. This was produced on Thursday when we asked if there were any other documents in which one load was accepted; compare the details and compare it to the supporting papers, this is what they accepted, one truck load of miscellaneous goods on February 13, 1975. I suggest to you that no businessman, no warehouseman and certainly not the defendants would accept liability on paperwork like this, and these documents corroborate down the line what Mr. Cogar and what Mr. Pollari and what the FBI agents observed and told you that the defendants, Mor Werberger, Chiam Kahan and Solomon Werberger were involved in, in the receipt and possession of these stolen goods.

Just in passing, you might find it interesting the fact that Mor Werberger on March 13, 1975 went out to buy a 1975 Lincoln Continental for \$9,700, later that day of course, the goods were seized and he never did purchase that car, and perhaps ladies and gentlemen the profits of this illegal purchase was taken away from him.

Finally, you have heard evidence that the defendants had in their possession stolen goods

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Corcoran - summation

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2
3 kist five weeks before, Whitehall products on the
4 same standard form, in the same handwriting and His
5 Honor will charge you that you can infer from a
6 similar act knowledge and intent on the part of the
7 defendants, if you find that they knew the Whitehall
8 products were stolen in their possession, you may
9 use that as some evidence of what their knowledge
10 and intent was on March 12th when they accepted the
11 stolen Schick products.

12 And what does Mr. Mor Werberger tell you?
13 He doesn't want you to believe that he knew those
14 Whitehall products were stolen. He got on that
15 stand and he told you that agent Colgan never told
16 him they were stolen, never told him. Just came
17 into his warehouse and took out hundreds of cartons
18 of Whitehall products and never told him that they
19 were stolen. I ask you ladies and gentlemen to use
20 your common sense and experience on that, and weigh
21 it against what agent Colgan told you. He testified
22 under oath that when they went on February the 14th
23 and February the 15th, they spoke to Mr. Werberger
24 and Mr. Kahan and Mr. Werberger; they told him
25 they were looking for stolen loads of Whitehall

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Corcoran - summation

1 products. They returned the next day with a search
2 warrant and explained to them the stolen goods were
3 being removed. Mr. Wercberger doesn't want you to
4 believe that he has to tell you that he had no
5 knowledge, because if he had knowledge that he had
6 every reason to suspect the paperwork that came in
7 on the Schick products, even if he were a legitimate
8 businessman, he would have had every reason to
9 suspect the paperwork on the products and Judge
10 Mischler will charge you that you can't avoid that
11 which you would know as obvious. A man can't turn
12 his eyes from the obvious and say later that he was
13 innocent, if the paperwork was so clear that he knew
14 those were stolen products and he's charged with
15 that knowledge, he can't consciously avoid it.

16
17 Mr. Wercberger doesn't want you to believe he
18 had any knowledge not in March, not in February.
19 Mr. Kahan doesn't want you to believe he had anything
20 to do with the transaction. He said he never knew
21 how many cartons came in and he is the president and
22 a businessman, he deals with other businessmen and
23 he never knew how many cartons came in.

24 Ladies and gentlemen, Mr. Colgan told you that
25 he had conversations with Chiam Kahan on the 13th

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Corcoran - summation

1 of March and Mr. Kahan told him that 673 cartons
2 came in on the 12th and 3,032 came in on the 13th.
3 He knew very well on March 13th what they had in
4 their possession, he observed, looking into the vans
5 and the trucks on the dock and he knew on the 13th
6 but he told you he never knew. Apply your common
7 sense and experience to that testimony, ask yourself
8 who is motivated to lie here, Mr. Kahan, Mr.
9 Werchberger or the agent. I suggest to you that
10 applying your common sense and experience to the
11 evidence that is before you, there is one conclusion
12 that you can come to; these defendants knowingly
13 and wilfully possessed these goods on March 13th,
14 and knowingly and wilfully participated in the
15 conspiracy to possess these goods.
16

17 I ask you after deliberating on this
18 evidence to return a verdict of guilty as charged
19 against all three defendants.
20

21 THE COURT: Mr. Youtt, are you prepared to
22 begin?

23 MR. YOUTT: May I possibly have a recess for
24 4 or 5 minutes, Your Honor.

25 THE COURT: All right. We'll take a five
minute recess.

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Youtt - summation

(Whereupon a recess was held.)

(After recess.)

THE COURT: Please seat the jury.

(Whereupon the jury is seated.)

THE COURT: Mr. Youtt?

MR. YOUTT: Thank you, Your Honor. Judge Mishler, ladies and gentlemen; we indicated in the beginning of this case, if you keep your minds open throughout the entire case, and as I indicated when I spoke to you at the beginning of this matter, it's not going to be an easy decision to make but I wanted to make as easy as possible by eliminating a lot of the issues that this case is not going to involve, and I think you saw from the way I conducted the defense in this case, and from the way of my general approach to it. This is going to be, really just a brief sort of an outline and I'll go through portions of this case again.

The issue is not going to be whether or not the goods were stolen, it's not going to be whether or not the stolen goods ended up at the CBS warehouse, the issue is not going to be whether or not agent Colgan said this to Mor Werberberger in respect to the Whitehall shipment, it's stolen

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Youtt - summation

or didn't say it. The issue is not going to be whether or not those goods were in some way illegally possessed by whoever delivered them to the CBS warehouse.

The issue comes down very solely to the question of whether these three defendants in this particular case had knowledge that the goods they received, the Schick products, those exhibits which you saw here on the table were in fact stolen at the time they received them as warehousemen or additionally, whether or not these three defendants participated in a conspiracy to receive the stolen goods which as Mr. Corcoran has outlined to you, involved an agreement to purchase the stolen goods.

Now, your function ladies and gentlemen is is a somewhat difficult one. This is the kind of like a mystery story, a mystery movie. The only difference is we really don't have the author in the picture to tell us what the real solution is, and unlike the situation back in the old Perry Mason days, there is nobody standing back here or sitting in the back of the courtroom about to pop up and tell us exactly what happened and give us a nice easily wrapupable kind of a solution to this kind

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Youtt - summation

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2 of a story. It's going to be up to you ladies
3 and gentlemen to analyze the evidence, to piece
4 it together and to make your determination, and
5 no one is going to tell you what the actual truth
6 of the matter is as you would be told at the end
7 of a mystery novel or at the end of Perry Mason,
8 so that makes it difficult for you. And nevertheless,
9 it's a job that must be done and it's a job that
10 evolves upon the jury in a criminal case, they are
11 the factfinders.

12 Our function, very briefly as you can see,
13 Mr. Corcoran has presented the arguments and
14 contentions of the government with respect to how
15 the facts can be analyzed and as to how he would
16 urge you to analyze those facts. The burden is
17 as Your Honor, Judge Mishler will instruct you, the
18 burden is upon the government to establish beyond
19 a reasonable doubt that this is going to be defined
20 to you by the court, beyond a reasonable doubt, the
21 guilt of the defendants, proof of the negligence
22 element in the case which must be established beyond
23 a reasonable doubt, the guilt of the defendants.
24 My function is to present to you another analysis
25 of the facts in this case, an analysis which is

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2 consistent with innocence, which is consistent with
3 the existence of the substantial reasonable doubt.

4 Now, you can't conclude ladies and gentlemen,
5 as His Honor, Judge Mishler will instruct you, you
6 are to base your conclusions on the evidence as you
7 see it and as you evaluate it, and not the fact that
8 I am going to analyze the evidence one way and Mr.
9 Corcoran will analyze the evidence the other way.
10 These are of no concern to you, unless you accept
11 them in your own minds, one analysis over the other
12 or some combination of those analyses. You're the
13 ones that make that last conclusion.

14 And what is not evidence in this case? The
15 mere fact that the case was brought, the fact that
16 the government of the United States has as its
17 process charged these particular defendants is not
18 a fact that you can conclude, the fact that they
19 wouldn't be charged if they weren't guilty. That
20 is something before the facts, and that, is something
21 Mr. Corcoran has presented in his argument to you
22 in very forceful terms, that is not a fact, but it
23 is a concept of what he said, and the facts that
24 I may bring to your attention sometime during the
25 point of this summation where I may become somewhat

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Youtt - summation

1
2 forceful too. I will not try to be forceful because
3 I think the best way for the whole process to work
4 is to go out step by step, objectively and in the
5 absence of passion, in the absence of any kind of
6 boorish type of conduct, but I am human too and
7 sometimes I get carried away, and then I somehow
8 manage to press the button in the back of my head
9 to cool myself down when it happens. But, the fact
10 of the matter is my own intensity in this case is
11 not evidence of the innocence of these three clients
12 and it wouldn't be proper for me to say in my
13 opinion they're not guilty, or in my experience I
14 have seen anyone so innocent, because I cannot be
15 a witness in this case, I'm a lawyer and so with those
16 basic background facts or those basic background
17 principles in mind, we will proceed to an evaluation
18 of the case.

19 You understand ladies and gentlemen that I
20 represent all three of these defendants, but in
21 evaluating the evidence you must make the decision
22 with respect to each, everyone of those defendants,
23 whether or not the evidence against them establishes
24 beyond a reasonable doubt their guilt or whether,
25 with respect to any or all or some of them there is

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a reasonable doubt. And, in analyzing that evidence it is up to you to see what the evidence does and what possible conclusions can be drawn from it.

Now, this case is complicated somewhat by the absence of some direct evidence that we would have liked to have seen in. In an ideal of a world, or in mystery novels that can be easily wrapped up, and we would have liked to have seen a witness to an actual transfer of money between these defendants and someone else who actually has stolen the goods, then it would be easy for you to make your decision because there would be a person testifying that could be crossed examined. If you believe them that they actually purchased the goods, then you could conclude that there was guilt in the case on the conspiracy count, and if there wasn't you could conclude that there was a reasonable doubt based upon the credibility in the case. It isn't that easy, because it doesn't have direct evidence in here of this particular person. What it doesn't have, ladies and gentlemen, is two kinds of evidence which you have to be very careful about and I anticipate that Judge Mishler will instruct you as to what those types of evidence are, and

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what you have to do in order to render a verdict based upon those types of evidence.

I can't instruct you on the law but I can tell you in anticipation of the two types of evidence that we will find, one is circumstantial evidence and the other is hearsay evidence. Circumstantial evidence, ladies and gentlemen, I anticipate will be defined to you as that type of evidence which you really don't see but from which based upon evidence which you do see you must draw an inference, if that inference is a reasonable inference which can be drawn.

If I were walking into the courtroom, and if we were here in the courthouse and someone walked in that door, one of the examples that's used for distinguishing circumstantial evidence, is that someone would walk in the door with an umbrella and a dripping raincoat. We can infer from seeing him come in through the door that it is raining outside. That inference in the ordinary course of events would probably be a proper circumstantial inference, circumstantial proof that it's raining outside; a dripping raincoat on the person walking through a door and a dripping umbrella.

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However, the problem is we can't be absolutely sure without looking outside and seeing the rain itself. And, if later someone comes into the courtroom and says, "Boy, you ought to see that terrible leak out in the lobby, water is cascading through coming from some type of a faucet there and there are marshals downstairs handing out raincoats and umbrellas so that people can get past it", we'll have an entirely different fact and you were unwarranted in concluding after hearing that evidence of the circumstantial proof that it's raining outside.

Now, I have gone on for some length to illustrate this ladies and gentlemen because you are going to find much of the proof in this case circumstantial in nature and you're going to have to ask yourself, based upon the test that Judge Mishler gives you, can I reasonable make the inference of guilt beyond a reasonable doubt in order to convict these defendants, based upon circumstantial proof. Now, the other aspect of the testimony and I will be touching in it in a little more detail and referring to it as I go through the analysis, I'm presenting to you now is the subject of hearsay

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evidence.

Hearsay evidence is something that a witness testifies to as having another person say, this is hearsay, it is a fact which no one in the courtroom has really seen. An example of hearsay would be a situation where someone walked into the courtroom and said, "I just saw John Smith and John Smith said that he saw Paul Corcoran staggering drunk out of the courthouse last Friday evening." Well, there's a problem there. First of all, we have the witness here who says that he heard John Smith say it, so we can test that witness' credibility and find out whether he has some ax to grind against Paul Corcoran and try to find out all sorts of things about that witness, but we can't find anything out about John Smith, we don't know whether John Smith is blind, whether John Smith is the greatest enemy of Paul Corcoran and we don't even know if he said that about Paul Corcoran or if he said that about all assistant United States attorneys, because he just doesn't like them as a class. The problem with hearsay evidence is that we don't have the person who said he saw the fact here to cross

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examine. And, you're going to find in this case that this is what we have also in this case, you're going to be instructed under certain exceptions to the hearsay rule which preclude the evidence.

You are going to be called upon to draw certain exclusions and to what extent you can give credibility to hearsay evidence. I ask you ladies and gentlemen to pay close attention to that particular instruction and to closely evaluate the evidence that you have heard of a hearsay nature in order to determine, whether in spite of its pitfalls, dangers and weaknesses, you can credit beyond a reasonable doubt conviction of the three defendants on trial here.

Now, what is the government theory of the case? Basically as you heard Mr. Corcoran analyze it to you, the theory is some \$400,000 worth of Schick products were stolen in a hijacking in Jersey. The truck was brought somewhere, evaluated by these defendants, the defendants were determined to become well satisfied with the load and communicated that to whomever the hijackers were and --

THE COURT: Mr. Youtt, I would ask you to suspend your summation at a convenient place because

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the lunches have arrived and to continue after lunch.

MR. YOUTT: This would be a good place.

THE COURT: We will suspend for lunch and I will ask everyone to return for 1 o'clock and summations will then continue.

(Whereupon a luncheon recess was held.)

(After recess.)

THE COURT: Are you ready to proceed?

MR. YOUTT: Yes, Your Honor, I am but my clients are not here in the courtroom.

THE COURT: All right, seat the jury.

(Whereupon the jury is seated.)

THE COURT: We are prepared to proceed.
All right, Mr. Youtt.

MR. YOUTT: Thank you, Your Honor.

Ladies and gentlemen when we broke for lunch I was just beginning to discuss what the government theories of the case were, and I'm just going to paraphrase it, as I understand it. The government theory, apparently, is that the people who stole the truckload of Schick products made arrangements with my client to evaluate those products on the night of March 11th. That the communication from them, "the buyer is well satisfied with them"

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Youtt - summation

actually came from my clients.

The next day goods were delivered in part to my client and in part to the S&F warehouse and the following day, the completion of the shipment was made. That thereafter, there were conversations between the government infiltrators, informants Mr. Cougar and some other members of the conspiracy, in effect stating, according to the government's theory, that my clients, the three defendants in this case are standup people, they're okay, they won't provide evidence to the government and we're going to go and collect the money that they owe us for purchasing the shipment on Saturday.

That, apparently ladies and gentlemen, is the government's case in this particular situation and it's been supported from according to Mr. Corcoran's analysis of the papers and the documents that are in evidence, in this trial, by inferences that the paperwork is so sloppy that it can't be a real warehouse paperwork, it has to be paperwork of someone who doesn't care anything about documents, he merely wants to take the goods in, he owns them, the total shipment. That, ladies and gentlemen as I understand it is the government's theory in a

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nutshell.

What I'd like to do is analyze each aspect of that case to show you how the evidence is not clearly adding up to that conclusion and how there were reasonable doubts and I will take you along the way and show you how you can't overcome the reasonable doubts in order to get to, as far as the conclusion that the government would like you to believe from the particular facts in evidence or on trial here in this case.

Let's start with the proposition that these three defendants, Solomon Wercherger, Mor Wercherger and Chiam Kahan purchased the goods in question. Really, if they had purchased them, there has been no substantial evidence of criminal involvement in those documents whatsoever, which do reveal a purchase, and it would be a very irregular purchase under the circumstances that the government has presented you with, but I contend ladies and gentlemen, that under the evidence of this case, there is far from sufficient evidence to establish that these defendants did purchase the goods in question. Let's start really where we ought to start, and that is with the testimony of the

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infiltrating informant, Mr. Cogar.

Now, Mr. Cogar is a very interesting character in himself, and I'm going to take two aspects of Mr. Cogar. First I'm going to take his testimony, the way he gave it and I'm going to assume that it's all true. Now, in doing that I don't intend to concede that what Mr. Cogar said was all true, nor do I intend to concede that Mr. Cogar is a credible witness.

I think there are many issues that came out in my very gentle cross examination of Mr. Cogar that establishes he is not credible, he is not a truthful person and, in fact, he has based his life upon dishonesty. But, let's take Mr. Cogar as if he were a specially trained special agent of the Federal Bureau of Investigation which he is not, and as if he were entitled to the same degree of honor and dignity that I would entitle to Mr. Hay who is sitting next to Mr. Corcoran at this trial table. Let's assume he was that kind of a witness and analyze what he said. First of all, he said that he was present in the dress shop, at the Lefferts Dress Shop with a couple of, one at least, of the coconspirators alleged on March 14th, 1975, and on

1
2 that occasion one of the coconspirators, Mr. Santa,
3 said, "what about the rabbis". In response, the
4 testimony was that Mr. Diamond whose role, he was
5 reading a newspaper article said that "these are
6 standup people".

7 Ladies and gentlemen, at that time we have
8 no way of knowing who the rabbis were and although
9 Mr. Corcoran has drawn the conclusion in his
10 closing argument that the rabbis are these three
11 defendants here, I suggest that's just what it is,
12 a conclusion unsupported by the evidence. Certainly,
13 it was unsupported by the testimony on that occasion,
14 we don't know what the newspaper article said and
15 we don't know what it involved. We don't know who
16 it was referring to and we don't have that newspaper
17 article before us today. We also don't know if there
18 was anybody else possibly even rabbis arrested or
19 charged, or suspected in connection with this case.
20 So, we haven't made the association rabbis equal
21 Solomon Werchberger, Chiam Kahan and Mor Werchberger,
22 not from the testimony of the infiltrating
23 informant Mr. Cogar at that particular moment.

24 Now, he goes on to another conversation,
25 again concerning the Schick load again, on the same

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Youtt - summation

1
2 date and not this time in the dress shop but over
3 there in that card game. Remember, that he was
4 bankrolled to join into it and at that point he said
5 that Mr. Santa asked Stanley Diamond, "what do you
6 think of", you know, "what about it"? And, Stanley
7 Diamond said "they're tough people, they won't get
8 anything out of them." Again, we have no way of
9 knowing who we are talking about. Before that he
10 had said, Cogar had said in speaking with Mr.
11 Diamond, "you mean they were real rabbis that the
12 government arrested?" And Cogar said that Diamond
13 replied, "no, they're Orthodox Jews. They wear
14 black hats and beards."

15 Ladies and gentlemen, if we could limit it
16 to these three were the only people who were arrested,
17 and we don't have evidence of that, and we certainly
18 have evidence from Mr. Cogar's testimony himself that
19 there were two different groups of people, rabbis
20 on the one hand and Orthodox Jews with beards on the
21 other. Now, if you want to say, well, maybe he
22 meant that they were the same people, I say to you
23 ladies and gentlemen, he didn't say it. All he said
24 was he asked the question, Cogar to Diamond, "you
25 mean they really were rabbis that were arrested?"

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Youtt - summation

and the answer was, "no, they're Orthodox Jews. They wear black hats and beards." That suggests to me, ladies and gentlemen, that there were two people, rabbis and some Orthodox Jews that the government arrested, the connection is not there. If we credit word for word the testimony of Mr. Cogar, and now let's go on to the following day, and even on the following day the 19th of March when again Mr. Cogar was speaking with Mr. Diamond, and Mr. Cogar reports to Mr. Diamond and says that everybody thinks the Italians have all of the money in New York but really the Jewish people have all the money, and he said further that the money they had received was in brandnew \$100 bills with wrappers that had the Star of David on them.

Again, ladies and gentlemen, assuming that they were either rabbis or the Orthodox Jews involved in the purchase of these particular stolen goods, there is no proof or testimony of any admission by anyone that those people who purchased the stolen goods were in fact Solomon Werchberger, Mor Werchberger and Chiam Kahan. Now, you want to look at that testimony and evaluate it, again we're accepting the truthful testimony of Cogar. I'm not conceding

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Youtt - summation

the truthful testimony but I'm assuming for purposes of this analysis, what do I think -- I'm sorry, I can't tell you what I think, but what are some other possibilities in analyzing Mr. Cogar's testimony.

Well, first of all if someone was in a position when he needed something from the government, or if someone were in a position where he wanted to get some reward money from an insurance company, or if a person was in the position where he knew the better information he gave to the government the better they liked it, the more money he would get for it, and perhaps that certain someone would be motivated to tell the best possible story he could to get to where he knew the government had to get, and it doesn't take adding up 2 and 2 through very serious mathematical proportions, that the only way you involve these three defendants in this conspiracy is to get it through the testimony of an infiltrating informant, Cogar. So, I'm suggesting to you, ladies and gentlemen, that although Cogar may have heard some talk in the card game about some rabbis or about some Jews, he doesn't have the connection to establish that it was these individuals who paid for the shipment of goods. He doesn't even

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Youtt - summation

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2 it on the fact of his testimony and I'm suggesting
3 to you, if he was motivated, that he was motivated
4 for the reasons I suggest to you; he was for the
5 reasons I have just outlined, he would be motivated
6 to stretch the truth as far as he could stretch it,
7 and I suggest to you in stretching it as far as he
8 could stretch it, he fell far short of where he had
9 to get, but he did that in an effort to make the
10 best that he could possibly sell to the insurance
11 companies, to the FBI and for his own benefit in
12 obtaining the assistance that he needs. If you
13 believe that special informant infiltrate for Cogar
14 was that kind of a person, then I suggest to you that
15 you cannot believe that person's own testimony of
16 what transpired and of what conversations took
17 place. This doesn't even get to the question of who
18 is Stanley Diamond and what part, if any, did he have
19 in the conspiracy. There is no testimony from the
20 other informant, Pollari to establish that Stanley
21 Diamond did or said anything, or was present for
22 any conversation. The only thing that comes in is
23 that Stanley Diamond's presence based upon the
24 testimony of the informant Cogar, who he is, what
25 he is, what axes he has to grind, what prejudices he

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Youtt - summation

has, what kind of demeanor he would have as a witness in testifying on the stand is something that you will never see, not in the context of this case.

I ask you ladies and gentlemen, based upon all of the circumstances, can you conclude that Stanley Diamond was part of a conspiracy, and that the conversations occurred during the course of the conspiracy and in furtherance of the conspiracy, if indeed there was a conspiracy between these individuals at all, the individuals who were in the conversation and if so, what weight can you give them as it applies to these particular defendants here. I haven't had a chance to cross examine Mr. Diamond and I won't. Your function is to determine what weight, if any, to give to the secondhand hearsay testimony about what he allegedly said. And I suggest to you, ladies and gentlemen, that what he may have said to whoever he may have said it can just as easily be reconcilable with the type of and, I hate to call it anti-Semitic, but with the prejudicial kind of assumptions about a people that can be said and that can be asserted in general, without any direct reflection as to who was involved, that the Jews have all the money, it's the rabbis,

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the money had wrappers on it with the Star of David, new bills with the Star of David on the wrappers.

Again ladies and gentlemen is this consistent with what the other evidence has indicated, or can you test Cogar by certain standards. Remember who Cogar is, and I again want to spend some time on informant Cogar because he is such an unusual person.

He started out testifying that he went to jail when he was 16, spent some time in prison and that he is now in jail awaiting some state charges. All right, people get in trouble but is it possible for someone to reform and get out of trouble and provide good faith assistance to the government because he realizes he's done wrong, but I suggest to you that special informant Cogar was not that individual. He is in trouble now, that means he has gotten into trouble since he terminated his informer status.

Now, what he didn't tell you on direct cross examination and, as a matter of fact he was specifically asked, "have you been in jail, ever been in jail before from the time you were in jail when you were 16 to the present time" and he said, "no". Well, on cross examination and again I remind

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you ladies and gentlemen it was hardly a withering cross examination that I put him through, he admitted to having spent six months in jail in 1975. He didn't tell us that on direct examination. I suggest to you not because I want to prove he's been to jail a lot of times, I'm sorry for the man, but I wanted to establish first of all, he's not a very likely witness and secondly, he doesn't like to say it like it is or appears that way, from the way he testified. He likes to say it as best as he can.

Now, he has admitted he's been into a lot of trouble, but he has also been into a lot of more trouble than he originally admitted to, and it took Mr. Corcoran in redirect examination to bring out some more trouble that the man was in that he didn't talk about on the stand. The trouble was about selling sawed-off shotguns and you wouldn't have known that had Mr. Corcoran not brought that up. I suggest to you to evaluate Mr. Cogar in the light of all that's been said and all that he is, and in evaluating Mr. Cogar I believe that all you have to evaluate on is the question of evidence, that these individuals were engaged in a sale. Evaluate also what Mr. Cogar said, the same man who is receiving

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roughly 50 to 300 dollars a day in a poker game,
and I don't condemn him for losing at poker but he
was losing the government's money, and he said he
was playing every day and although he testified he
received only 2500 from the government, he is
receiving hundreds of dollars for unloading stolen
shipments and he was also taking money that he was
suppose to use and losing it in a poker game to
obtain information and buying heroin with it in
order to support his \$120 a day habit.

(Cont't. on next page.)

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Youtt - summation

Now, is this the kind of witness you base a case against these three defendants on, or do you evaluate it as a highly unreliable witness, an unreliable witness to the point of providing information in numerous truck hijacking cases, in which he had never received a penny from the insurance company. Apparently, they never believed him, and that's the kind of an unreliable witness providing you with hearsay assertions, and even those hearsay assertions not arising to the level to say these men bought the goods from his associates, Jimmy Santa, and DeLuca and Diamond, and whoever else he meant, or do you reject that testimony altogether.

I suggest to you, ladies and gentlemen, we can't tell how much, if any of informant Cogar's testimony was valid and truthful, and other suggestions which he indicated, even if you can accept it as having been made by a special agent, it doesn't close the gap; it doesn't establish that the rabbis were these three individuals.

Now, we have talked about circumstantial evidence and we talked about hearsay evidence in connection with other things. I suggest to you that

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the theory that these three individuals did purchase as was asserted by special informant Cogar, is overcome by the direct evidence. First of all, there is the direct evidence that members of the Satmar sect which these individual defendants are members of, do not utilize the Star of David for any purpose. Secondly, there is direct evidence as to their nonengagement in any kind of business activities during Saturday, and you might say that well it may have been a Saturday night, it may have, but those two direct items of evidence don't support Cogar's testimony that there was going to be a transfer of monies on Saturday, and the transfer of money took place in wrappers with the Star of David on them. The evidence, the direct evidence is to the contrary.

I started with really the most minor points, ladies and gentlemen, the most minor points of direct evidence; let's get to something of a more significant nature. First of all, direct evidence does not indicate these individuals bought the goods. What did the driver of the truck say; it was an assertion that, while he was being held captive by these people who have pistolwhipped him and held h

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2 in a captive state for several hours, the statement
3 was made that, "the buyer is well satisfied with
4 the goods."

5 Now, on one hand the buyer might be one of
6 these gentlemen, the defendants; it might be all
7 three of them as a group, as a corporate entity,
8 but I suggest to you that if you are dealing with
9 three people, you don't say "the buyer", you say
10 "the buyers". The direct evidence from the driver
11 of the truck is inconsistent in its use of the
12 singular word, and now that's standing alone ladies
13 and gentlemen. If the entire shipment had gone to
14 the CBS warehouse, you would be warranted into
15 saying who does he think we are saying that the
16 buyer could have been a corporate entity or a
17 shorthanded designation of the three of them, and
18 we can't buy that. But, this wasn't the situation.
19 We had a shipment of goods that went to two locations.
20 Here comes another element of direct evidence which
21 is opposed to circumstantial evidence, which
22 controverts the theory that these individuals, the
23 defendants here bought the goods. It went to two
24 locations, and there has been nothing to establish
25 a linking between the S&F warehouse and the CBS

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Youtt - summation

warehouse. There has been nothing to establish that these individuals said, "well, send part of it to a friend at S&F warehouse". There is no indication they even knew the S&F warehouse or that they're even friends or in any way associated, so it must be that this one buyer, it must be the one person or be it these three people in shorthand version, sent the goods to two locations and, that, ladies and gentlemen, is an element of direct proof which does in fact controvert the theory that it is one buyer, these people, it might be one buyer, and I suggest to you that probably it is one buyer, but it's a buyer that is above the CBS warehouse and who is above the S&F warehouse, some other individual, person or persons. It may even be a rabbi who are the buyers, but it isn't these people. These people took a portion of the total amount of the goods.

Now, let's go one step further to one more item of direct evidence. The direct evidence is that nobody much was paying much attention to the quantity of goods that were going to each respective place. Mr. Corcoran has pointed out that several hundred parcels may be worth as much as \$20,000.

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Youtt - summary

The fact of the matter is, that part of the parcels were delivered at the S&F warehouse on the 12th, and remember the informant Pollari's testimony, and I didn't cross examine Pollari, there is nothing for you to disbelieve him on based upon anything I did as to his credibility. He testified that he went with the first shipment on the 12th of March to the S&F warehouse; they partially unloaded the truck, they didn't count the goods when they put it in, not according to his testimony, when they loaded it but they went to the S&F warehouse and they unloaded it until it got late and there was about a quarter of the goods left in the truck, several hundred cartons probably and, they left. Where did they go the next day? They didn't go back to the S&F warehouse, they delivered them to the CBS warehouse.

Now, that indicates ladies and gentlemen, does it not, that there may have been a buyer who bought both loads that went to the S&F and to the CBS warehouse and he really didn't care how they were split up, or where they were split because they were both consistent with the driver's testimony, that there was a buyer, but inconsistent with the theory that it was these defendants who

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bought it. If it was these defendants who bought the whole shipment, why didn't the shipment go to the CBS warehouse, or why hasn't there been testimony to establish reasons for it, that the split was made.

If on the other hand you want to speculate, and I suggest to you that's all it is, and I suggest it would be improper to go that far, maybe these individuals bought only part of the load, the part that they got. Then I would ask you ladies and gentlemen if the difference as Mr. Corcoran suggests, possibly as much as \$20,000, why would the thieves in selling two parts of the load to two different people just gratuitously bestow a bonus of \$20,000 upon these individual warehousemen at the disadvantage of whoever else they paid, but I suggest even going that far, you have to speculate because you don't have any evidence whatsoever that these defendants bought part of the whole and not the whole thing. The buyer is well satisfied with the load and the load went to two locations; these defendants were responsible for only one of those locations and the load was indiscriminately split.

Now let's go one step further on this, to

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an item of direct evidence on that particular issue, and this evidence again not circumstantial, it is direct and it is concrete. The agent from the Federal Bureau of Investigation who testified as to the handwriting, the handwriting analyst from Washington, testified that the same person wrote the CBS warehouse documents and the S&F warehouse documents that went on that Schick delivery that day. He also testified the same person wrote the Whitehall shipment document which I will get to and discuss a little later in my presentation; The same person, one Patrick J. Maloney wrote the same document. Well, if you add this up ladies and gentlemen, and if Patrick Maloney were my client there would be some difficulty. Patrick J. Maloney, one single person, the buyer is satisfied with the goods. The goods went to two locations, neither of which was Patrick J. Maloney's apparently and the buyer sent them to two places. Why did he send them to the CBS warehouse, because they were patsies, because he got one through before and because the other one got stopped at the CBS warehouse, it never got back to him and he was undetected.

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Youtt - summation

1 The only thing that doesn't add up there,
2
3 is apparently Patrick J. Maloney is not a rabbi.
4 Well, I don't know what the explanation for that is,
5 ladies and gentlemen, it may be that there were other
6 people for whom Mr. Patrick J. Maloney was working
7 when he was drafting these series of documents,
8 but all of this evidence adds up to a theory which
9 indicates something entirely different from the
10 government's theory, and you are going to have to
11 strike down some very substantial inconsistencies
12 in order to find beyond a reasonable doubt that the
13 government has proven the conspiracy to purchase the
14 goods in questions here. You're going to have to
15 strike down the word "buyer" instead of buyers, you
16 are going to have to stike down the testimony of
17 two different locations receiving differing amounts,
18 you are going to have to strike down Patrick J.
19 Maloney's role as possibly being the buyer, and
20 you're going to have to read into the very
21 questionable testimony of Mr. Cogar, some inferences
22 which just aren't there.

23 Let's talk about some more direct evidence
24 inconsistent with the theory that these individuals
25 purchased the load. Start with Mr. Wolf Frieman,

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Youtt - summation

that man that testified, the bookkeeper of the CBS warehouse. He testified to two things in connection with two direct things, in connection with this aspect of the case. He said, first of all, as far as he knows, the CBS warehouse does not deal in cash, they receive money for storage in checks in almost all cases. They don't purchase goods for their own account. Well, either he's a coconspirator ladies and gentlemen, or he doesn't know or he's lying. Well, I suggest he's not a coconspirator; he didn't look like one, he didn't act like one, and he hasn't been charged with anything. I suggest that he's not, that he is in a position to know ladies and gentlemen, because he was the bookkeeper and he was centrally involved with the activities in that particular warehouse, and was involved in counting the goods in question in this case. So, the only thing to conclude is that he was somehow drawn into some of these things, but didn't have enough knowledge to testify that they dealt in cash or that they purchased goods for themselves.

I suggest on the other hand, if you credit his testimony, it establishes all direct proof

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that these individuals didn't purchase the goods in question.

Now we can go to the last item of direct proof in here. Each one of these defendants unlike the hearsay asserters who were not here, the hearsay declarants who were not here, every one of these defendants has testified, each one of them ladies and gentlemen looked out into this room and said, "no, I didn't purchase those goods". And, you are free to reject that testimony if you don't believe it, you're free to reject it if you find beyond a reasonable doubt that they did not convince you in their denial, coupled with our evidence which I have discussed, and I will discuss in connection with this summation. But, I suggest yet also, ladies and gentlemen, that part of the function of the jury is in looking at the people who testify and evaluating whether or not they're truthful or not. Each one of these defendants denied their guilt. Solomon Werberger, look at him and determine when he denied purchasing these goods if he was lying.. Think about Chiam Kahan and make that same determination and, think about Mor Werberger and

1
2 make that same determination. Determine whether
3 while he was being cross examined possibly he was
4 getting a little annoyed by virtue of the cross
5 examination, but determine whether that annoyance
6 is attributable to merely his frustration in this
7 case or is attributable rather even to the nontruth-
8 telling, he is lying, or whether or not the
9 testimony of these defendants which were direct
10 denials that they did purchase the goods which you
11 have seen and had the chance to evaluate, and think
12 about the defendants themselves. Think about their
13 demeanor, their stature, their age, their experience;
14 young men, I think all or most of them are under
15 30 with limited experience in warehousing. They
16 opened in 1973 and this happened in 1975, early
17 in 1975 and they were in business less than two
18 years. Two of them had a year or two former
19 experience as a former warehouseman, and one of them,
20 Mr. Mor Werchberger had no experience in warehousing.

21 They were educated in religious institutions.
22 Mr. Mor Werchberger was trying to borrow money to
23 buy a car; the car was perhaps above his means and
24 the bank determined that to be true, so he didn't
25 borrow that money and he didn't buy that car. He

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Youtt- summation

1 was trying to borrow money at a time when it was
2 alleged he was purchasing a half million dollars
3 worth of goods, and now ladies and gentlemen, you
4 try and conclude in your minds beyond a reasonable
5 doubt whether based upon everything you know about
6 these individual defendants, it is likely in light
7 of common sense and experience that they were in
8 a position to purchase a half a million dollars
9 worth of Schick products, determine that from the
10 type of individuals that you have heard testify
11 in this case, the type of hijackers and the type
12 of men who had done the things that are clearly
13 established in this case by the truckdriver, and by
14 other people who found the stolen truck. Determine
15 whether these are the individuals who are likely
16 to be purchasers of stolen goods and in this
17 quantity or whether it is far more likely than
18 anybody who is engaged in this kind of a bigtime
19 hijacking that is going to deal with someone with
20 heavy experience in stolen shipments.
21

22 Now, ladies and gentlemen, I ask you to look
23 at these gentlemen and see if they fit that mold,
24 based upon everything that you know.

25 Okay, I've gone through the direct evidence

Youtt - summation

of noninvolvement here with the sale aspect of this case. I suggest to you, ladies and gentlemen, that if you were in a position when you have determined that there is certainly a reasonable doubt that these individual defendants were involved in the sale, in the purchase of stolen goods, that you really at that point should render a verdict of not guilty on both counts of the indictment. But, we can go on to another count of the indictment which must be dealt with somewhat separately, for purposes of total evaluation, it must also be dealt with and I must discuss some of the aspects of the nature of the receipt of the property in this case, also, as it may bear upon the question of whether these individuals were conspirators. The two counts tend to blend and mesh together, the first being as you know conspiracy to purchase or receive a stolen shipment, along the government theory of the purchase and the second, being the actual receipt of the stolen shipment with knowledge, guilty knowledge that it was stolen shipments. And, I suggest if you find that they didn't purchase it, it would be very difficult to come up with evidence to show that they had guilty knowledge when they received it.

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Youtt - summation

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If the evidence is not sufficient to establish it first, then the theory must be that these individuals were in business as warehousemen, took the goods knowing that they were stolen to help someone, the thief or recipient from the thief to come back and pick them up when the coast was clear. All right, let's look at that and let's look at the other additional facts supportint the receipt of this merchandise, these goods as they bear upon the ultimate question of the other count of that conspiracy.

On the one hand the goods came into the warehouse, a shipment of goods came into the warehouse on the 12th of March, 1,654 cartons said that bill of lading which the truckman brought; 1,606 said Mor Wercherger, and there was a dispute. How that dispute was resolved, it was resolved by the signing of a bill of lading or a receipt from the CBS warehouse, saying "one truckload" and not signed as it is the normal course of procedure, the bill of lading with the 1,654 on it. Now, Mr. Wercherger has testified that the reason for this is because the truckman didn't want to sign for the reduced amount, or didn't want to receive a sheet of

Youtt - summation

1 paper showing the reduced number of cartons, that
2 he would have a problem with that and Moishe said
3 "Well, have your boss call and I'll resolve it with
4 him and in the meantime I'll give you this receipt
5 for just one truckload."
6

7 Now, we've shown you some evidence to indicate
8 they received one truckload, or a destination or
9 description on bills of lading as one truckload
10 before. One that came in a day, from I think it
11 was the Cadillac Trading Company exhibit which I
12 think was Exhibit Q or R, and there is one that
13 came in on Friday which they received, a one
14 truckload sheet which was later supplemented by
15 some sheet of paper that provided much detail, but
16 went to another location and came in later. So,
17 it shows that it has been done but more than that
18 ladies and gentlemen, look at the context of that
19 day on March the 12th on the loading dock. We
20 apparently are dealing on the shipment and receiving
21 it, and I say apparently, because I really don't
22 know for sure whether you can surmise that where
23 with some of the same people that are engaged in
24 the hijacking.

25 All right, you heard that truckdriver

Yutt - summation

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2 testify and you heard him and saw him, and he was
3 obviously emotional, had an emotional reaction to
4 what he went through and you heard him testify that
5 he was pistolwhipped. You heard him further
6 testify that he was held, you heard him testify
7 he was ordered to stay motionless in the back seat,
8 and though motionless, he was asked whether he was
9 staying still and he said "I'm trying my best".
10 You saw real fear from the man and that was the
11 same group that was delivering the next day.

12 I suggest to you someone in Mor Werchberger's
13 position isn't going to argue too long and too
14 hard with that truckman about how he's going to take
15 that shipment or about how he's going to turn over
16 documents. And, if that truckman says to him, "I
17 don't want to take a document that has a little
18 signature and circle on the bottom and says 1,606,
19 that's going to be trouble for me, you just sign
20 what you got", you're not going to argue with him
21 on that, but at the same time you're not going to
22 go all out and insist upon your rights. So, you
23 suggest that, a compromise was made on that
24 particular day of signing that one document for one
25 truckload and not signing the other document, which

Youtt - summation

is the ordinary practice, and not consistent with what they received and had done in the past, a one truckload destination, but it's also consistent with the circumstances and the surrounding conditions that existed at the time.

Now there are other things which bear upon that receipt of that shipment. The government would have you believe that it was so highly irregular in the business of CBS warehouse to receive goods under the documentation that they received them, that there would be, this is the evidence itself of a guilty knowledge. I suggest to you that it just not true ladies and gentlemen. I asked Mor Werchberger as he testified, to bring samples of documents which were, which involved a consignee with no address stated. He brought me some samples and in those samples that you will see, if you have them in your juryroom or if you request them, there are at least 13 instances where the names or the addresses, sometimes both of the consignees is not listed. In many of the same documents there are additional exhibits up to 10 or 12, of situations in which the goods are very inadequately or sketchily described, similar

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Youtt - summation

razors and blades in this case.

Look at those documents and you will see similar vague and general descriptions. There are 3 or 4 documents in which a CBS document has replaced or was used as a receipt instead of a bill of lading receipt from a truckman, in a situation where a truckman arrived without bills of ladings. So. everyone of the things that occurred on March the 12th and March the 13th were things that occurred in these gentlemen's business before.

(Cont. on next page.)

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Now, am I here to defend it as an accepted and recommended practice of the American Warehousemen Association? No, I'm not. I don't know that you have to go to great length to speculate as to why these gentlemen are no longer in business at the CBS warehouse, but it can be they're no longer in business because possibly they weren't as careful as they should have been in warehouse receipt documents, but the fact is on repeated and numerous occasions in this formal style of doing business, they received goods in exactly the same form and with the same documentation as existed in this case.

Now, why wasn't it a Schick company document which came in with the goods? Well, that's a question ladies and gentlemen possibly that should have been asked by Mor Wercherger; possibly it could have been asked by agent Colgan when he came to collect the first shipment, the Whitehall product. It was the same kind of a document but as agent Colgan testified, he was more interested in learning who had delivered the goods and didn't really stop to talk about the form of the documents or the form that the documents came in when he spoke to Mor

16 1 Youtt - summation.

2 Wercherger. I'm not criticizing Mr. Colgan and
3 I'm not here to condemn the FBI, but I suggest it
4 isn't something that normally jumps out at these
5 defendants and it wasn't brought to his attention,
6 a month or two before when they had an experience
7 with the Whitehall products. What is another reason
8 why, first of all as Mr. Mor Wercherger testified
9 he doesn't pay attention to the shipper, he doesn't
10 have contact with the shippers, he is alerted to
11 the nature of the shipper or how the goods
12 originated; He has the goods and from then on he
13 deals with the ultimate consignee. He doesn't
14 inspect the documents to determine where and how a
15 shipper arrives with it, but moreorless it's also
16 possible that when the Schick company, that the
17 Schick company would have sold a quantity of Schick
18 razors to the International Trading Company,
19 assuming that that company existed, it would be a
20 shipment by the International Trading Company
21 shippers and the International Trading Company
22 was dealing with someone who had Hertz Rental Trucks
23 to pick it up at the Schick warehouse dock and
24 deliver it to the CBS warehouse for storage on
25 behalf of the International Trading Company. This

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2 is consistent with the business, that something like
3 that occurs.

4 I'm not suggesting ladies and gentlemen we
5 define how Schick ought to do its business, or how
6 the trading company ought to be doing business,
7 but the fact of the matter is it isn't as obvious
8 as the government would suggest that these were
9 stolen, merely because the bill of lading was not
10 on Schick stationery.

11 Okay, ladies and gentlemen, we have gone
12 through all of these things and you have heard
13 Mr. Mor Werchberger testify and you've seen the
14 documents, the similar documents that they used
15 in their warehouse and in their trading activities.
16 Those documents, ladies and gentlemen, I suggest to
17 you are the same type of documents, the same type
18 of -- and I hesitate to say sloppy, because they
19 really aren't necessarily sloppy, they were the
20 practice that prevailed in the CBS warehouse at the
21 time to receive a shipment of goods, and wait for
22 contact from the consignee. Wolf Frieman testified
23 that they have never, 99.9 percent I think he said
24 of their documents came in without the address of
25 the consignee. Again, remember the testimony of

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2 Wolf Frieman and evaluate whether he was in a
3 position to know or was he deliberately lying about
4 that, and if he wasn't, then consider that as a
5 condition prevailing at the CBS warehouse at the
6 time. If it was a condition then it certainly is
7 inconsistent with the theory of guilt that in this
8 case the defendants didn't notice that there was no
9 address for the International Trading Company and
10 therefore, it must be stolen.
11

12 Now, when we combine the first and the second
13 day, ladies and gentlemen, the first day's shipment
14 there was a somewhat discrepancy in numbers and there
15 is a lot of numbers in this case. First of all,
16 it was 1,654 on the bill of lading for the first
17 day; the actual count was 1,606. Now, that count
18 was made by Mr. Wolf Frieman among other people, and
19 he testified that he went out and actually made the
20 count and made the notes which are part of an
21 exhibit here, and I believe those are government's
22 Exhibits T which shows 1,606. Why did they make
23 that kind of a detailed breakdown and establish the
24 inventory card that Mr. Wolf Frieman testified of.
25 Now, I sense that the government is talking out of

Youtt - summation

both sides of its mouth. On the one hand it says that they're sloppy in their recordkeeping and on the other hand they say why would they keep such detailed records? I suggest to you they keep detailed internal records as verified to by Mr. Frieman and Mr. Werchberger testified also, that when a shipment come in they carefully "palatize" it in such a way that the palate contains all of a certain description of merchandise and another palate would contain another description of merchandise, and that they set it forth on the inventory card, which you will see as I believe Exhibit N in this case. So that when that same consignee calls for so many boxes of such a designation to go out, they can readily get it without breaking down the whole load.

The testimony was they could break down loads like that very easily and ship out the entire thing back to the consignee, upon demand, and that's the reason why they have inventory control cards and that's the reason why Mr. Wolf Freiman was so circumspect in putting it on the card in this case.

Now, I suggest to you ladies and gentlemen, again we're referring to the first day's transaction,

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if it was purchased by these defendants there was no reason whatsoever to catalogue it as a storage item; it would have been just as easy, number one, to just bring it in and not catalogue it at all, merely bring it up and put it into some obscure portion of the warehouse and never refer to it, and not bring out any other employees who was engaged in bookkeeping work to do it, to do an inventory card on these items and merely have it there where the principal of the company knew it was and nobody else knew that it had even entered the warehouse or been put in any official log. Now, would they be afraid that someone say like a Wolf Frieman would discover it and run out to the authorities? I don't think so.

The fact of the matter is they brought Wolf Frieman into the middle of it, and if it was a conspiracy, why would they have brought him to make that count. I suggest to you by bringing Wolf Frieman in, unless he was a coconspirator and I suggest to you he was just doesn't look like one, but if he wasn't, then the reason they brought him in was because it was a legitimate transaction and they had nothing to hide, and they brought him to

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2 make that count. If they wanted to hide it and
3 if they were going to hide it by trumping up
4 documents, then why would you have a discrepancy
5 from the document that came in on the first day
6 as to the actual document that was prepared for
7 the warehouse, and why wouldn't you sign that first
8 bill of lading with the 1,654 on it like you do in
9 all other cases, and then mark a circle and marke
10 1,654 in it, and write Mor Werchberger and circle it
11 and bring it in, and then you would have exactly
12 what you have in other cases. If you're trying to
13 cover it up, I think you would do it that way.
14

15 Or on the other hand, what does it mean when
16 you've got one count here and another count there,
17 an inventory card and Mr. Frieman is making his own
18 independent count? I suggest ladies and gentlemen
19 that you may conclude this is not evidence of guilt,
20 it is evidence of sloppiness at best, negligence,
21 but not guilt. Guilt would have been never showing
22 Wolf Frieman what had come in, and while we're on
23 that subject, guilt would be taking advantage of
24 some of those three floors of that 150 by 150 foot
25 building that we have, perhaps to put those goods

Youtt - summation

1 from that first day somewhere way back on the 7th
2 floor where the employees wouldn't see it, where
3 everyday where people coming in and going wouldn't
4 see it, where customers coming into the office
5 wouldn't see it, because if it's stolen it should be
6 hidden. And where do they put it, what did the agent
7 say when he testified? We went up on the 4th floor
8 where the office was and we stepped off the elevator
9 there it was, we didn't have to go too far to
10 execute that search warrant, it jumped out at us.
11 I asked agent Dowd to describe the place. He said
12 it was a maze, there was 10 corridors or 10 ailses
13 going one way or 15 aisle going the other way, going
14 up the length and width of the building. The 4th
15 floor had the offices, the other floors didn't have
16 any offices, why would you put goods that you knew
17 were stolen on the 4th floor and have Wolf Freiman
18 count them? Why wouldn't you put them on the 7th
19 floor and have Wolf Freiman never come out of his
20 little bookkeeping room?
21

22 Let's go to the second day now. On the
23 second day a shipment came in and it was found on
24 the floor in the building right next to it, only
25 53 paces away, about 130 feet. A shipment came in,

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2 a shipment came in two trucks and it took three and
3 a half hours to unload it. It was placed on palates
4 on the shipping platform, when it was organized
5 after three and a half hours, and one of the agents
6 I think it was agent Dowd, and correct me if I'm
7 wrong and again, whatever I may say about evidence
8 in my recollection is what the testimony was. If
9 it doesn't square with yours, then your reflection
10 is better than mine because you are the fact finders
11 and I'm not. As I recall, it was agent Dowd and
12 he came out of his vantage point in the Marine Corp
13 Building, went to a wall of some sort, and there was
14 three and a half hours of unpacking, and by the
15 use of binoculars he was able to observe Schick
16 cartons on this loading dock. This is the same
17 loading dock that fronts on 50th Street, as you
18 come down 50th Street and you see the loading dock
19 as you are driving in from Brooklyn, that's the way
20 it was and right next to this building here, that's
21 where the unloading was and this took three and a
22 half hours to accomplish.

23 I suggest to you ladies and gentlemen, that
24 that unloading as well as the unloading of the
25 day before, open and conspicuous, notorious in the

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Youtt - summation

2 presence of other truckmen and other tenants in the
3 building, is also evidence of innocence. If you
4 were taking a stolen shipment of a half million
5 dollars of goods from Jimmy Santa and the Defillipo
6 brothers and people are pistolwhipped, you don't
7 take that merchandise out in front if there's
8 anything else available. Now, what else is
9 available?

10

Well, it just so happens in this case that
11 there was a rear entrance wall around the back of
12 the building, and the only thing you can see out
13 there is the seagulls in New York Harbor which had
14 an overhead door. You could back a truck or a van
15 into it, and from the looks of this picture you
16 could back a Hertz truck, a full 20 foot rental
17 truck and unload it into that elevator and
18 surreptitiously, you could then take it up to the
19 7th floor where you didn't want anybody to see it.
20 They didn't go back to that back ladies and
21 gentlemen, they went right in front of the Marine
22 Corp Building and they went right in front of where
23 everybody was doing business to unload the shipment
24 for three and a half hours.

25

All of these facts and circumstances are

Youtt - summation

consistent with innocence, not guilt; they're consistent that they were being just what they were, somewhat slipshod informal warehousemen who are no longer warehousemen.

Let's now talk about the earlier shipment, the Whitehall shipment. You will be instructed as I understand it and anticipate it, that if you are able to find that there was a type of guilty involvement with respect to the Whitehall shipment of these defendants, you will be able to consider whether what they did in that particular case can be used as evidence of a consistent design, scheme, or plan in the receipt of the Schick goods. Now, ladies and gentlemen, I ask you to look very closely and evaluate very carefully the receipt of that particular shipment, and I suggest that when you do, rather than finding any guilty involvement and rather than finding the inference that because they received that shipment they must be guilty of this shipment, the evidence will produce an inference entirely to the contrary, entirely consistent with innocence and not guilty in the following way. The Whitehall shipment came in and I don't want to get into a sparring match with Mr.

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Corcoran or with agent Colgan as to whether he said it was stolen to Mr. Mor Werberger or not, certainly he didn't come in to Mor Werberger and say, "well, the FBI wants it because we need some aspirin, we've got a lot of headaches down at the FBI", he came in and said it's not suppose to be in your warehouse because somebody got it wrongly. Maybe he said it was stolen and maybe Mor Werberger didn't remember when he testified to the fact of the matter. Mr. Mor Werberger was on notice that there was something wrong with the shipment, and I'm not going to make an issue of it and I'm not going to call agent Colgan a liar. But what happened in this case, and incidentally, talking about calling people lairs, a lot of people get the misconception in a trial that a cross examination is something which, if you do cross examine someone, you believe he is not telling the truth. That's simply not true, as you can see I don't -- hardly any of my cross examination aside from Mr. Cogar went to the question of not truth telling as a matter of conversation, telling of lies, but my cross examination if you will refresh your recollection probes the position of persons as to whether or not

Youtt - summation

he does actually remember what he remembers. Cross examination also brings out other facts.

In agent Colgan's cross examination, you'll remember he testified that he really was interested in finding out who delivered that shipment when he spoke to Mor Werberger. He testified Werberger didn't know where the goods were but readily took him to look. I suggest a guilty person would not readily take an FBI agent in without a search warrant to look for goods, but would tell him to come back later, and come back with a document, a search warrant. He didn't do it, he didn't release the goods without a search warrant, but this was after he readily took agent Colgan to the goods in question.

He also testified he didn't know, and Mor Werberger testified he didn't know whether they were beforehand, but beyond that though in his conversations with agent Colgan as agent Colgan readily testified, they didn't really discuss the shipping documents. So, there was nothing in Mor Werberger's mind to conclude that he had done something wrong in accepting the shipping documents as a standard form bill of lading, without an

Youtt - summation

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2 address from the consignee; there was nothing to
3 indicate that he had done something wrong, it was
4 a perfectly friendly kind of a transaction and
5 as he testified it was a labor of having to put
6 those goods in his warehouse and for those 1 or 2
7 days' storage fees. As far as Mor Werchberger was
8 concerned, this being his first encounter as far
9 as the evidence reveals with this kind of a
10 problem, he released the goods and the FBI was very
11 nice, they came down and took the merchandise. If
12 it happened in the future, that would happen again,
13 and so now possibly there was a nice conclusion to
14 draw there.

15 But ladies and gentlemen, is it consistent
16 with guilt that he did that on that occasion, never
17 having spoken with the agent about the nature of the
18 documents, never learning that the agents were
19 somehow questioning documents that didn't have the
20 address of a consignee, or which were on a standard
21 form bill of lading from a major producer such as
22 Whitehall; It wasn't there, the inference is again
23 and I'm not here to defend Mor Werchberger and say
24 that he did everything absolutely correctly in his
25 warehouseman or not that we're writing a text here

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warehousing, but he assumed that it was okay. He took the goods as he had taken them because nobody told him they had done something wrong. When he was asked did you recognize anyone who delivered it he said he didn't.

Incidentally, that gets back to one other point I neglected to speak about. In talking about informant Cogar's testimony concerning what was the nature, what was the significance of standup people, if in fact there was any reference at any time in Cogar's, conversations with Cogar occurred as to whether or not the rabbis were standup people, or if there were any references to whether or not the people who were arrested would provide information, it could well have been that the discussions were merely that no Jew would testify against another Jew, or no Jew would testify in a civil court, and there's nothing to worry about, the driver, Jimmy Santa who asked the questions being identified, not as a seller but merely as a deliverer, because clearly the good witnesses for Jimmy Santa if Jimmy Santa were charged with the things that Pollari would have done, I believe there would have been an identification made and not whether he was

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2 called a seller of the goods, but merely identifying
3 him as the driver into the warehouse, and in selling
4 to Patrick Joseph Maloney or somebody else who was
5 the buyer.

6 I suggest to you that that inference could
7 probably be drawn, and obviously agent Colgan's
8 information or what he was seeking in terms of the
9 Whitehall shipment was who were the people and
10 certainly Santa could have been one and the same,
11 that's possible.

12 Now before I do finish with this Whitehall
13 shipment ladies and gentlemen, I ask you to look at
14 the receipts that was received in the Whitehall
15 case and determine if there is something in that
16 particular receipt which should have been noticed
17 in such a way for Mr. Werchberger looking at it on
18 one occasion at the time when he turned over those
19 documents to the FBI, which could have alerted him
20 in the future saying if that shipment came in a
21 month and a half later, that it came in in the same
22 way as the first did, that there was the same
23 handwriting on it which the expert testified to, it
24 really doesn't jump out at you to the point where
25 you should remember a month later that this is the

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same handwriting on this document and make that conclusion, and also the standard form bill of lading were used all the time, as Mr. Corcoran indicated in this case.

Further, I suggest to you the addition of guilty knowledge with respect to the Whitehall case is really nonexistent, or is certainly insufficient and in addition I feel is certainly contrary to the evidence.

Let us now get back to the question of the Schick shipment in this case, and as to the consistency of numbers. Over the two days there was an inconsistency of several hundred cartons, but if you add up first of all, take the figure of 1,606 and take the figure again -- I don't know, I concede with Mr. Corcoran that this is really not a number kind of a case, from the standpoint of the conspirators, whoever stole or delivered the goods, they didn't apparently seem too concerned with numbers. Mr. Pollari who was the first informant testified, he didn't say anything about making a count of what went into the truck, they just threw it onboard and took it over, and they didn't finish unloading one truck in one location, so they left

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and loaded it with whatever they didn't load at the other location. So, apparently the numbers really don't make any difference here, but if we do take the number of 1,606 as the receipt point because that is the number that Mr. Frieman counted, and that's the number that were delivered on the first day, and if we take the number from Mr. Werchberger's list that he had in his pocket on the second day, and add that up we would come up with a figure that's entirely different. I don't have the figure with me, but I believe they would come out with entirely different figures from the 3,032 which was on the shipping document of that day.

Now, how is that difference allocable in the first place. The CBS warehouse ended up long, they didn't end up short, they ended up long. If you count the number of cartons, which were approximately in the neighborhood of 200, somewhere between the total adding of Mor Werchberger's tally in his pocket, whatever it was I believe the 1,606 from the former day, there is a couple of hundred more, something like 3,203 palates that weren't properly counted on that particular day.

Why is that? Again, it was sloppy, it wasn't

Youtt - summation

even finished because the truck-shipper, the consignee had still not called to square up the discrepancy from the day before. There was nothing particularly to worry about from the CBS warehouse's point of view because they were long and not short, and in addition, I think it is one of the instances of sloppiness, of negligence on the part of the counter. Why would that happen, and doesn't happen every time or doesn't happen every time to the CBS warehouse, I'm suggesting to you that perhaps their own impatients and nervousness was enhanced by the facts that they were dealing with some pretty tough mean customers who were delivering the goods on that day, who didn't care how many goods they had, who didn't make their own count and who didn't cross-check the count of these defendants, and who were just in a hurry to get out. And, if that was the case ladies and gentlemen, I suggest to you that you must attribute that discrepancy in numbers to sloppiness and inefficiency due to the conditions which existed rather than say that must mean that these defendants bought the goods. If they bought the goods they would want to know how many they were receiving for that matter, but it's

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inconsistent with the theory that they were trying to cover up, making things look like they were on the up and up, to the point of loading these goods at the front of the building and taking them up to the 4th floor, counting them and bringing them out and having Wolf Freiman, and with all of that say that they didn't care about the extra couple of hundred extra cartons because they were buying them, they cared.

(Cont'd. on next page.)

1 They cared because they want to make it look
2 straight, if it didn't look straight but that's not
3 because it was illegal in their mind or because they
4 were guilty of something, it's because what they're
5 guilty of is negligence and sloppiness, and they have
6 been convicted of that crime by the loss of their
7 business, and those are the things that you have to
8 evaluate in this case, ladies and gentlemen, those are
9 the things which I talk about being like a mystery.
10 You have to make those decisions. You have to decide
11 whether you in evaluating all of the evidence can find
12 beyond a reasonable doubt the guilt of these defendants,
13 that it has been established by reason of their sloppi-
14 ness and by reason of the hearsay assertions which
15 come from people that never came into this court. The
16 inconsistent numbers simply are not consistent with
17 the theory of covering up guilt. To cover up guilt
18 you make consistent numbers.

19 Now, why was the document in the pocket of
20 Mor Werchberger; ladies and gentlemen, I don't know.
21 Here is where common sense comes in, and I don't know
22 how other people do things, but I do know for myself I
23 put things in my pocket, sometimes they are not found
24 until my suits get washed, but things I put in my
25 wallet they're found the next time I look for a dollar.

1 If you are going to convict Mor Werchberger because he
2 put a very important kind of a tally sheet into his
3 wallet, I suggest we have reached a pretty low ebb as
4 far as requiring standards of proof beyond a reasonable
5 doubt. I think it's entirely consistent with innocence
6 that you put an important document, a document contain-
7 ing the number and the name of a banker that you went
8 to to get an auto loan from in addition to the tally
9 sheet that is involved in this case, into your wallet
10 rather than your pocket in order to remind you to take
11 it out and give it to the right people to make internal
12 documentations.

13 In conclusion ladies and gentlemen, I present
14 to you I think a straight defense. There's been no
15 real technicality kind of arguments. There was a point
16 you remember where we talked about possession and what
17 the boxes contained, and to me, you know, I could have
18 said well, the boxes didn't really contain Schick
19 blades and we'd have to look into them, but we have
20 looked into them and seen these boxes of Schick blades.
21 I suppose I could also make some technical point of
22 saying there are thousands of them and the rest were
23 filled with stones and you can't convict them because
24 they were filled with stones, but I am not making
25 those arguments to you. I am making a straight honest

1 defense in this case. I have suggested to you the
2 kind of reasonable doubt areas that you should explore
3 in evaluating this case. I hope that I have been able
4 to anticipate whatever Mr. Corcoran may say to you in
5 his final summation, I don't get a chance to make
6 another summation. There may be some things you may
7 have wanted to hear, but I can't make them anymore.
8 I have tried to answer whatever there is but if Mr.
9 Corcoran raises questions in your mind, please try to
10 interpret what I have said here in order to see how I
11 might answer those particular areas, in order to see
12 how I might have responded if I did have the chance.

13 I am sure that you are going to take your
14 function very seriously as you have been and was
15 shown by your attentiveness through these past few days.
16 Judging from the defense, judge these defendants upon
17 the evidence against each of those defendants; evaluate
18 whether the proof against each or several or some or
19 all of them have established guilt beyond a reasonable
20 doubt, as to either or both counts, and decide whether
21 Jimmy Santa, Stanley Diamond, Joe DeLuca, or whoever
22 else was involved along with Frank Joseph Maloney were
23 co-conspirators along with Solomon Wercberger, Mor
24 Wercberger and Chaim Kahan, or decide whether that
25 conspiracy ended with the individuals who have been

1 identified but who weren't here today in this courtroom.
2 Decide whether that mysterious notification some few
3 minutes after the FBI entered the premises on March
4 the 13th would just as easily have come from some co-
5 conspirator in the neighborhood, from possibly the
6 rabbis or possibly the owner of the goods who didn't
7 put the goods in his warehouse, or in his own office
8 in the neighborhood, but had them secreted in some
9 chump's warehouse, some chump who had been fooled
10 before by the Anacin shipment and some chump who was
11 so obviously innocent that the FBI had never arrested
12 them and hadn't gone through them to make an arrest of
13 the real people that were guilty of the Anacin
14 shipment and the real people who were guilty of the
15 Schick shipment.

16 Decide whether this is a more reasonable
17 interpretation of the evidence, and whether that
18 interpretation establishes a reasonable doubt in your
19 minds that these defendants are guilty. Evaluate all
20 of that based upon the instructions of his Honor,
21 Judge Mishler, and reach a true and just verdict
22 ladies and gentlemen and you will have performed your
23 function in this case. Thank you.

24 THE COURT: We will take a short recess and we
25 will have the rebuttal summation by the government.

1 (Jury excused from jury room.)

2 THE COURT: Mr. Youtt, I have some questions.
3 First, please be seated. Is there any evidence in the
4 record that these defendants are now out of this?

5 MR. YOUTT: Yes.

6 THE COURT: I missed that then.

7 MR. YOUTT: Mr. Mor Werchberger testified to
8 that, your Honor.

9 MR. CORCORAN: I believe he testified that it
10 was no longer an active warehouse. There was no
11 explanation as to why they went out of business.

12 THE COURT: Then there was some basis for it.
13 You went to the jury and said, in effect, I concede all
14 the issues except criminal intent; does that have any
15 implication beyond that statement to the jury? Are
16 you saying that's out of the case or are you saying,
17 do you want me to hand the issue to the jury?

18 MR. YOUTT: What I wanted to say, I don't intend
19 to make it a factual act as to whether or not the
20 goods stolen or delivered to the CBS warehouse were --

21 THE COURT: In other words, you still want me
22 to charge on it?

23 MR. YOUTT: Yes, your Honor, I would like you
24 to charge on it.

25 THE COURT: How about a charge on the value of

1 the goods; do you concede the value of the goods is
2 over a hundred dollars?

3 MR. YOUTT: Yes, I do your Honor, I concede it.

4 THE COURT: That's out of the case?

5 MR. YOUTT: Yes.

6 THE COURT: All right. How much longer will you
7 take for your rebuttal?

8 MR. CORCORAN: About twenty minutes.

9 THE COURT: Do you want to start now?

10 MR. CORCORAN: I'd like two minutes, your Honor,
11 I would appreciate it.

12 THE COURT: I think I'm going to charge today
13 but I don't think I'm going to have them deliberate
14 today, because by the time you get through it will be
15 close to 4:30 and we won't have much time.

16 MR. CORCORAN: Your Honor, you indicated you
17 would not be available until tomorrow afternoon?

18 THE COURT: Well, I have changed my mind. I
19 think I'll have them in early, at about 9:30. I will
20 have to leave by 11:30 and I'll get back by 2:30.
21 I will be gone for three hours but in the meantime, I
22 think at least I shall give them any exhibits they
23 want and make any testimony they want, well I think
24 they will just have to wait and they can have with
25 which to eat their lunch.

1 MR. CORCORAN: My rebuttal will take approxi-
2 mately twenty minutes. The charge would follow that
3 and if they were able to get the case by say approxi-
4 mately 3:00 o'clock that would leave at least two-and-
5 a-half hours for --

6 THE COURT: Really, do you want me to give them
7 a fifteen-minute charge that you're talking about?

8 MR. CORCORAN: Your Honor, I just want to --

9 THE COURT: You are talking about 4:00 o'clock.
10 Is this a problem? If I release the two alternates,
11 and they start deliberating we will be taking a chance
12 that somebody is going to get sick overnight. There
13 is also a snowstorm expected, and that's why I'd
14 rather get them in here early tomorrow and start
15 their deliberations. Would the defendant consent to
16 a unanimous verdict of less than twelve? I haven't
17 got that recital yet, as I recall.

18 MR. CORCORAN: Your Honor, if they were to
19 begin their deliberations today and to stay late
20 tonight, they may not have to come back through the
21 snowstorm tomorrow morning, at all.

22 THE COURT: By late day, I am talking about
23 7:00 o'clock. I wouldn't send them out to dinner
24 because if I sent them out to dinner it wastes the
25 whole evening. So, I'm talking about a late day

1 meaning at best two-and-a-half hours of deliberations.
2 I don't think they are going to arrive at a verdict in
3 that time, and I think I'd be taking too much of a
4 risk.

5 MR. CORCORAN: One other thing, your Honor.
6 It seems to me that it's appropriate, in light of Mr.
7 Youtt's arguments, to suggest to the jury that the
8 defense has subpoena power; they have put in a defense,
9 and the reference to the failure of the government to
10 put on Stanley Diamond, to allow the defense to cross-
11 examine him and the other co-conspirators, I think in
12 that light it would be proper to argue to the jury
13 that subpoena powers are available to the defendants
14 and they can call anyone they wish. I intend to make
15 that argument, unless otherwise --

16 THE COURT: I won't have any objections to your
17 making that argument, provided you, with a clear
18 understanding that they're not required to offer any
19 proof, that the government has the burden of proving
20 guilt beyond a reasonable doubt, that both sides have
21 the right to subpoena.

22 MR. YOUTT: Your Honor, I think that's a little
23 unfair in light of the fact that the criminal charges
24 as pending against all these individuals, and --

25 THE COURT: Is that in the record, that there

1 are charges pending against the other individuals?

2 MR. YOUTT: No, but it's clear in the record
3 and certainly I didn't charge the government with
4 negligence or with misfeasance in not bringing the
5 witnesses forward. I merely said in evaluating hearsay
6 testimony, the disadvantage is that you don't have the
7 person here.

8 THE COURT: You're right. The argument wasn't
9 made that you didn't bring in Diamond, the argument
10 was made that hearsay isn't as reliable as having the
11 party here for cross-examination.

12 MR. CORCORAN: Your Honor, I think the defense
13 has been quite unfair. Mr. Youtt well knew we wouldn't
14 produce Mr. Diamond, we made those arguments.

15 THE COURT: I am convinced that you are not
16 going to make that argument.

17 (Short recess was taken.)

18 THE COURT: Seat the jury please.

19 (Jury is reseated in the jury box.)

20 THE COURT: Mr. Corcoran.

21 REBUTTAL SUMMATION

22 BY MR. CORCORAN:

23 At this time ladies and gentlemen I am given
24 an opportunity to rebut defense counsel's arguments.
25 That's the nature of criminal procedures and, as Mr.

1 Youtt indicated, he will not have an opportunity to
2 speak after me. The reason being the government has
3 the burden of proof and, accordingly, the government
4 opens up and closes.

5 Mr. Youtt suggested to you ladies and gentlemen
6 that the defendants here were at best bunglers; that
7 they were unable to run a warehouse properly and that's
8 why they had these goods in there. I think that point
9 is disproved by looking at the documents and you will
10 have to look at the documents to some extent and under-
11 stand what the arguments of both sides are in this
12 case. If the defendants come in here in this situation
13 with documents relating to the Schick products, that
14 they were the same as the other documents they had
15 offered in evidence, it's essentially the documentation
16 that was kept in their warehouse business, then we
17 would have to be relying upon the testimony of the
18 likes of Mr. Cogar and Mr. Polari, but that is not the
19 case ladies and gentlemen, we are not here dealing with
20 a situation with the documentation being merely
21 negligent, that all the documentation is the same.
22 We are dealing with a situation where this documentation
23 is outstanding, extraordinarily different than the
24 documentation they normally keep in the course of their
25 business.

1 Mr. Youtt is in a position to argue based on
2 this documentation that they were merely clumsy, that
they were unable to keep proper records, because they
were very careful in their business. They produced
5 evidence as to what their documents are like. Mr.
6 Youtt suggested through Mr. Wercberger that Mr.
7 Wercberger just went through his records and brought
8 forth examples that might indicate the kind of
9 problems that they have. What I suggest to you ladies
10 and gentlemen is that if there were any records
11 of the CBS warehouse that were anything like the
12 documents in this case, that it would be before you.
13 This is the best that Mor Wercberger could do to show
14 you his clumsiness in documentation, and I submit, if
15 that were the case, it would be so in every case.
16 You've got what is important in this case, and you've
17 got what is missing here. Mr. Youtt would have you
18 focus upon the absence of the addresses on the CBS
19 documents, and I ask you to consider that a smokescreen.
20 It is in fact a smokescreen, it's not the absence of
21 the address that makes these documents significant, or
22 the Schick document significant, it's the absence of
23 an all important carton figure, the figure upon which
24 the liability of a warehouseman turns. The address is
25 relatively insignificant, I'm sure they're not concerned

1 with where the company is located when it brings in
2 goods, because the company is going to come back and
3 pick them up, and the documentation, the invoice is
4 the receipt and will be presented when the goods are
5 retrieved.

6 What is important and was as evidence in every
7 one of these transactions, that the defendant rely
8 upon how many cartons were left at the CBS warehouse,
9 how much are these defendants liable for, what do they
10 have to turn over to the owner of goods when they
11 return and retrieve the property. As you go through
12 them, they may not be detailed as to specific type of
13 products in detail, but every one of these documents
14 contains exactly a number of cartons and every one of
15 them indicates that the number of cartons was checked,
16 was counted, was circled before the goods were accepted.
17 It's the all important information, otherwise the
18 defendant would be accepting goods on documentation of
19 unlimited liability, and they don't do it as a matter
20 of course, and there is no document down here other
21 than the one they produced this morning which doesn't
22 have a specific carton number indicated on the sheet,
23 and all the documents produced this morning have very
24 specific carton numbers on the CBS warehouse invoice.
25 There is not one of the transactions which the

1 defendant accepts its goods on the notation "A load"
2 or "Three loads." And if you examine the bills that
3 were sent out, it appears that on each of these
4 transactions that the invoice for billing purposes
5 contained the same number of cartons as the bill of
6 lading, and the figure circled on the bill of lading,
7 that's the recount. The recount was done which was
8 specific, that the billing was for exactly what they
9 accepted initially. You don't have that in the Schick
10 documents. There was not the care taken that they
11 took on every other transaction and that's what makes
12 Mr. Youtt's argument in effect, that this is not
13 clumsiness, but rather ladies and gentlemen, you have
14 a situation where time was of the essence.

15 The truck had been taken the night before.
16 Goods had been gotten off the street, and as far as a
17 count, probably the hijackers wouldn't care how many
18 cartons the truck driver had. The truck driver didn't
19 testify as to any of those documents being with him
20 to indicate how many cartons there were. We do know
21 however from the amount recovered there was approxi-
22 mately 5900 cartons, but in distributing this to the
23 CBS warehouse, it's probably likely that the hijackers
24 themselves didn't know, and certainly the defendants
25 didn't know when they took them in.

1 You observed Mor Werberger on the stand.

2 When I suggested to him that there were 5072 cartons
3 removed, he had no answer. He said, "Who said that?"
4 "If I told you that the FBI testified that there were
5 5072 cartons removed, what would you tell me was the
6 explanation for the initial 400 cartons?" He said,
7 "It must have been a mistake, I don't have an answer."
8 He didn't know, he was in the courtroom and took the
9 stand that this was the documentation and it was in-
10 accurate, and why was it inaccurate, because it was
11 absolutely not needed, there was no need for him to
12 keep an accurate count because he knew nobody was coming
13 back to retrieve the goods, because ladies and gentle-
14 men, he knew it was not a lawful warehousing operation.
15 He was aware of the nature of the goods and the people
16 who were putting the goods in.

17 Mr. Youtt suggests to you that the defendants
18 were somehow in the same position as the truck driver
19 that was pistol whipped. The reason they don't have
20 an accurate documentation is because these were tough
21 guys, and yet there's been no evidence that the hi-
22 jackers went to the CBS warehouse and put guns on them
23 and forced them to take the goods into the warehouse.
24 In fact, if there were tough guys like Mr. Youtt
25 would have you believe, in appearance, I would think

1 the defendants would be even more accurate as to what
2 their count was if they were storing goods for people
3 that they were fearful of. They better have the right
4 number of cartons when those people come back, but
5 that wasn't the situation either. Ladies and gentlemen,
6 the defendants had no need to know how many cartons
7 were coming in, if they counted them later. They
8 counted them afterward and came out with 1606 and
9 they did have the need for some documentation, as I
10 indicated earlier the testimony indicated. Five
11 weeks before the FBI had walked into their warehouse
12 looking for stolen goods and they weren't arrested
13 that time. Their public warehousemen story held up
14 that time and they weren't arrested, but they knew it
15 was a possibility that the FBI would be in looking for
16 those goods and that that story would not hold up a
17 second time. So, they created documentation and
18 the documentation had to be accurate, but not for the
19 hijackers, it had to be consistent but only with what
20 they had on the floor, not with what they accepted.
21 1654 was fine as far as the truckman was concerned
22 because he was never coming back, but the internal
23 documentation had to be consistent with the number of
24 cartons because if the buyer came and took out 1606
25 and their internal documentation said 1654 they would

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have a difficult time explaining the inconsistency.

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I suggest to you ladies and gentlemen that had the Bureau not entered the CBS warehouse a half-hour after the unloading process finished, that it would have been internal documentation for 3500 cartons and not 3032. That that documentation would have reflected what the defendant had in there, because that was their fallback, were just public warehousemen, but the Bureau went in a little earlier than expected and their documentation was not that way, the way a warehouseman would have had it. It didn't limit their liability, and it's obvious from the documentation that they made no count on the loading dock; they accepted those goods without any reason to expect they'd have to turn back the same number of cartons.

Mr. Youtt attacked Mr. Cogar's testimony. I think if you will evaluate Mr. Cogar's testimony you would have to conclude that he was testifying credibly, that he was testifying reliably. If Mr. Cogar were going to testify falsely before you, if Mr. Cogar was giving information that was inaccurate just to gain a benefit, ask yourselves ladies and gentlemen, would he limit himself to what he said if his intention was to gain some benefit from putting these defendants into this case. Would he really relate a conversation

1 about the rabbis, or what he told you that these
2 defendants paid money or received the goods in his
3 presence. Reflect now on this, if you will. Mr. Cogar's
4 testimony was coming to the FBI Strike Force agent on
5 the 13th of March, on the 14th of March, on the 15th
6 of March. He could have said anything at that time,
7 he could have said he was present at a meeting but he
8 didn't. He related factual conversations that he
9 overheard. He didn't add to it, he didn't say "I
10 observed these defendants" and more importantly, how
11 did Mr. Cogar know that orthodox Jews were involved,
12 that rabbis were involved if that conversation didn't
13 take place in front of him.

14 Mr. Pollari told you who was involved in the
15 unloading at the warehouse. Mr. Cogar was not part
16 of it, he was a fringe-type informant related to one
17 of the people involved. He asked to sit in on a card
18 game and he did unload other hijacked trucks, according
19 to his testimony, but he was not assisting in the un-
20 loading of this truck. He was not present at the CBS
21 warehouse, according to any of the testimony, on the
22 12th, or the 13th. He would have no way of knowing
23 that rabbis or orthodox Jews were involved in this
24 case unless he overheard the conversations. He didn't
25 embellish them, he didn't say he had seen those people,

1 he merely related the conversations. Ask yourselves
2 ladies and gentlemen if a man in an informant's
3 position passing on information that's able to be
4 checked out instantaneously would make out false
5 stories, make himself vulnerable, cutting off the
6 source of his heroin, in effect cutting off his money
7 from the agents if he gave false information or was he
8 doing what he was paid to do, relate conversations
9 that took place in the midst of a bunch of hijackers.
10 Nor will we rely wholly on Cogar's testimony, it
11 doesn't stand by itself. Mr. Youtt would have you
12 analyze each piece of evidence separately, as if none
13 of the other evidence existed and to make a judgment
14 on that piece of evidence as to whether or not there
15 is a reasonable doubt whether there was participation
16 of these defendants.

17 Your function ladies and gentlemen is to
18 evaluate all of the evidence and while each piece of
19 evidence by itself may not be sufficient to convict,
20 when you consider the evidence together it's more than
21 sufficient, it's beyond a reasonable doubt. Mr. Cogar's
22 testimony does not stand alone that the rabbis were
23 orthodox Jews, that they made payments. If that were
24 the case your job would be more difficult, but his
25 testimony is corroborated by the possession of goods

1 by these gentlemen, by the documentation that they
2 allege is legitimate documentation; all of these
3 things taken together indicate an unlawful possession
4 of these goods.

5 Mr. Youtt throws another smokescreen up before
6 you. Wolf Freeman said he was part of the case, he
7 doesn't look like a conspirator. Ladies and gentlemen
8 there are many people involved in this hijacking and
9 there were people involved in the possession of these
10 goods. There were many people that may very well be
11 guilty but the only question before us is whether or
12 not Mr. Mor Werchberger, Chaim Kahan and Solomon
13 Werchberger were guilty. You need not pass upon
14 whether Mr. Wolf Freeman was guilty, or Stanley
15 Diamond or any of the others. The question is whether
16 these gentlemen were guilty, and I'd ask you to
17 evaluate Wolf Freeman's testimony both for its content
18 and its reliability. First, Wolf Freeman is an
19 employee of these defendants, their bookkeeper, and
20 relied upon them for his livelihood. Certainly his
21 testimony is a defendant's testimony and is suspect
22 in this case. The defendants had the most to lose in
23 this case and every reason to make themselves appear
24 innocent. Wolf Freeman is their employee, he is
25 equally suspect but what does he testify to? Nothing

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1 more than he did count these cartons, that there were
2 1606. These are his notation, and I have no doubt
3 ladies and gentlemen that you can find from the
4 evidence that Wolf Freeman participated in the
5 counting of these cartons, but that's totally irrele-
6 vant. Would the defendants reveal to Wolf Freeman
7 that they purchased these goods unlawfully, that they
8 were stolen goods; I don't know whether you can find
9 they would tell him or not, but that's irrelevant too,
10 whatever Wolf Freeman knew. The point is these
11 defendants had the goods on March 12th; they had known
12 on the 13th, the documentation indicates it was not a
13 lawful possession as warehousemen, the testimony and
14 the documentation together indicate it was an unlawful
15 possession. You need not even find that the defendants
16 purchased the goods to find them guilty.

17 If you find that these were not the Masidics,
18 the rabbis, the orthodox Jews that purchased the goods,
19 were not the buyers, it only is required that you find
20 that these men knew these goods were stolen goods when
21 they possessed them. If they knew that these were
22 stolen goods, then they are guilty as charged. If
23 they possessed them for rabbis that they were associating
24 with, knowing them to be stolen goods, they are guilty
25 as charged. You need not make a finding that they

1 were purchases even though the evidence would permit
2 such a finding.

3 Mr. Youtt asked whether or not these men look
4 like they would be involved in a \$500,000 purchase,
5 cost \$500,000 is a little more than the goods were
6 worth. I think the retail value was alleged to be at
7 \$400,000. We assume they wouldn't be paying retail
8 value for stolen goods, perhaps a fraction of the
9 wholesale price which is not \$400,000, as far as
10 these defendants is concerned, it would cost them
11 considerably less to purchase those stolen goods.

12 The defendants offered you evidence of their
13 religious beliefs, and I don't wish to question their
14 religious beliefs, I'm certain that this may very well
15 be, that a religious Jew believes in the Sabbath and
16 that would disallow his transactions of business on
17 Saturday, I believe that's the case, we concede that
18 is how Hasidic, orthodox Jews, that they would not be
19 permitted to buy, by their religion, to transact any
20 business on Saturdays. The evidence in this case was
21 that Mr. Santa said he was meeting with the individual
22 on Saturday.

23 Two things about that, though. With all respect
24 to the religious beliefs of the groups involved, one,
25 it was pointed out that the Sabbath ends at approxi-

1 mately 5:30 to 6:00 o'clock, it ends at sundown in
2 March, and Saturday evening is not part of that
3 religious observance. Secondly, with regards to the
4 defendants not participating in transactions because
5 it was a Saturday, with regards to the defendants not
6 using the Star of David because they believed it to be
7 reserved for religious purposes, I suggest to you
8 ladies and gentlemen there is more than one commandment,
9 keep holy the Sabbath, that's one commandment, but thou
10 shalt not steal, thou shalt not covet thy neighbor's
11 goods is another commandment, and if the defendant
12 says the evidence shows who participated in it, they
13 have possession of goods belonging to another, they
14 violated that commandment. I suggest to you it's a
15 short step to violating the other commandments here
16 involved.

17 I ask you to take note of the testimony of the
18 defendant, contrary to what Mr. Youtt suggests, the
19 testimony of Mor Werberger and Patrick Colgan one
20 of the FBI agents and what was said about the Whitehall
21 load is very important, very important, because Mor
22 Werberger took that stand and tried to tell you he
23 had no idea that the Whitehall products were stolen.
24 He was never told. Well, ladies and gentlemen Agent
25 Colgan says that's not just true, and if Mr. Werberger

1 lied about that, you can consider that evidence of
2 guilty knowledge, guilty intent. He was told that the
3 Whitehall products were stolen, according to Agent
4 Colgan, that gave him every good reason to suspect
5 that similar goods coming in from similar sources
6 would also be stolen. He may not have known on the
7 kinds of bills of lading that came in, but as a ware-
8 houseman who accepted a load of stolen goods, he
9 certainly had reason to expect in the next five weeks
10 that someone was going to approach him for the goods
11 that he was going to have there and he would have to
12 explain to them, when the FBI seized the goods, and
13 it's not the kind of a thing that would slip your mind
14 easily. No one ever came back he said; well, of course
15 not, because the people who put the goods in knew
16 immediately the goods were gone and as they did in
17 March, because this Mr. Werberger, Mr. Kahan and Mr.
18 Werberger knew who put those goods in as they did in
19 March.

20 Mr. Youtt suggests, well maybe one of the other
21 conspirators were hanging around the neighborhood and
22 noticed the FBI taking the goods out. Where was
23 Solomon Werberger at that time; the testimony from
24 Solomon Werberger himself was that he shared equally
25 in the decision-making process here, yes he is

1 secretary of the corporation but he had left the
2 corporation that afternoon, the CBS warehouse and he
3 was somewhere else. He received a call to come back to
4 the warehouse, that the FBI was at the warehouse about
5 the same time that Jimmy Santa and other people
6 involved in the hijacking of this truck became aware
7 that the FBI was on the premises receiving those goods.
8 I suggest to you ladies and gentlemen that Solomon
9 Werberger was one of the few people in a position to
10 inform Santa and the others that the goods had been
11 received. Certainly Mr. Kahan, Mor Werberger who
12 were present with the FBI agents would have had a
13 difficult time communicating this information to some-
14 body else, but Solomon was out of the premises and he
15 got on the phone and was in a position to communicate
16 it. And, nobody ever came for the goods on the 13th
17 of March.

18 Finally, as I suggested, Mr. Cogar's testimony
19 is corroborated and it is interesting. The hijackers
20 thought these defendants were stand-up people, stand-
21 up people because when the Whitehall products were
22 taken out of the CBS warehouse in February of '75,
23 five weeks before this load went in, they gave up no
24 information about who the hijackers were; there were
25 no arrests, no testimony against other people, and yet

1 they would have you believe they had no connection
2 with it.

3 I ask you this final question, ladies and
4 gentlemen, to consider this; we know that the hand-
5 writing expert has told you that the goods put into
6 the CBS warehouse on February 5th were put in with
7 the documentation by the same person who put those
8 goods in on March 12th. I ask you this; would a hi-
9 jacking group who lost a substantial load the month
10 before from the CBS warehouse put their goods into the
11 defendants' warehouse in March, after they suffered a
12 significant loss? Or are they going to put in \$400,000
13 worth of stolen goods again if the defendants had no
14 connection with them. Don't you think they would
15 suspect that this was a bad place to leave a load and
16 that the defendants would call the FBI in February,
17 but no, they knew they had stand-up people; they knew
18 that they could trust them and they felt perfectly
19 safe in putting in a second load five weeks after they
20 had lost a large Whitehall load, the same people.
21 Based on the documentation which clearly corroborates
22 the testimony of the agents and Mr. Pollari and Mr.
23 Cogar, I suggest to you ladies and gentlemen there is
24 only one conclusion here.

25 The evidence points directly to the defendants'

1 involvement, to the possession of the goods knowingly
2 and willfully, and to the conspiracy to possess these
3 goods, and I would ask you to return a verdict of guilty
4 as charged against Mor Werchberger, Solomon Werchberger
5 and Chaim Kahan. Thank you.

6 THE COURT: The jury is excused for a few
7 moments, and I will charge you on the applicable law.

8 (Jury is excused from the courtroom.)

9 (Short recess taken.)

10 CHARGE OF HONORABLE JACOB MISHLER

11
12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 you've listened attentively to three summations and I
14 know how difficult it is to just sit and listen and I
15 am going to ask you to listen to the instruction as I
16 give it; it will take about an hour and fifteen minutes
17 or an hour and a half, and then I'll suspend for the
18 day. I changed the schedule and I will ask you to
19 come back early tomorrow, about 9:30 to start your
20 deliberations, but we are recessing now. By the time
21 I get through, I don't think you'd be ready for any
22 continuous, intelligent and full discussion.

23 The case is entitled, "The United States of
24 America against Chaim Kahan, Solomon Werchberger and
25 Mor Werchberger" and though you have three different

1 defendants represented by one lawyer and three
2 defendants who were or are associated in business
3 together, each one must be decided separately as if you
4 had three trials and measure the testimony of the case
5 against each one.

6 I'll use the term defendant and defendants and
7 are used interchangeably, and they mean all three unless
8 I single one defendant out for a particular charge.

9 Every defendant in every criminal case is
10 presumed to be innocent, that means at the outset of
11 the trial the jury must conclude that the defendant
12 is innocent of both charges in the indictment and that
13 presumption prevails throughout the trial and through-
14 out your deliberation and is enough to acquit a
15 defendant. The presumption of innocence is a strong,
16 time-honored presumption in Anglo-American law.
17 Symbolically it means that the defendant starts off
18 the trial with a clean slate and against that pre-
19 sumption, the government submits evidence and if the
20 evidence outweighs the presumption to the extent that
21 it is proof beyond a reasonable doubt of the defendant's
22 guilt, then you may find the defendant guilty, other-
23 wise the presumption prevails and when the presumption
24 prevails, you must find the defendant not guilty.

25 We have what we call a Scotch verdict. Of course

1
2 it's true in Scotland and it's indigenous to Scottish
3 law, and in Scotland we have three verdicts; guilty,
4 not guilty and not proved. In this country we only
5 have two verdicts, guilty and not guilty, and not
6 guilty includes not proved. So that if the Government
7 fails to prove guilt beyond a reasonable doubt, your
8 verdict must be not guilty.

9 What is reasonable doubt? A reasonable
10 doubt is a doubt which a reasonable person who after
11 considering all of the evidence has a doubt as to the
12 guilt of the defendant. It's doubt based on the
13 record, on the evidence in the case as distinguished
14 from a vague speculative imaginary doubt. It's the
15 kind of doubt a reasonable person would have in a
16 matter of importance to himself. It's the kind of
17 doubt that's distinguished from an emotional doubt
18 that arises from a disinclination to perform an
19 unpleasant task. Again, a reasonable doubt is the
20 kind of doubt that would make a reasonable person
21 hesitate to act in a matter of importance to himself.
22 Proof beyond a reasonable doubt is therefore proof of
23 such a convincing character that you would be willing
24 to rely and act upon it unhesitatingly in the most
25 important of your own affairs.

 The Government is not required to prove guilt
beyond all doubt, the Government doesn't have to prove

1 that every bit of evidence submitted in the trial
2 before you is true beyond a reasonable doubt. The
3 Government's burden is to prove every essential element
4 of the crime charged beyond a reasonable doubt.
5 Later in the charge, I'll instruct you on what are the
6 essential elements of the crime charged in this
7 indictment.

8 The defendant isn't required to offer any
9 evidence. The defendant may rely on the failure of
10 the Government to prove his guilt, the reasonable
11 doubt may arise from the failure of the Government to
12 offer proof or submit proof that you think the Govern-
13 ment should have had. A reasonable doubt doesn't
14 depend on the number of witnesses called or the number
15 of exhibits offered in evidence. A reasonable doubt
16 is based upon the quality of the evidence admitted in
17 the case.

18 Now, what is evidence? Evidence in this case
19 or the record in this case, is the sworn testimony of
20 all the witnesses and that includes the direct examina-
21 tion, the cross-examination, redirect, recross, the
22 exhibits that are marked in evidence, facts which are
23 judicially noted and the stipulation entered into
24 between the parties. It is upon that record and
25 reasonable inferences that may be drawn from the facts

1 established from the record upon which you will base
2 your verdict. I think it's of some help to point out
3 matters that are not evidence in the case. For
4 example, statements of counsel in opening and closing,
5 which is sometimes called a summation, is not evidence;
6 opening and summation has some use in the trial but
7 it's not evidence. The opening is designed to point
8 out the position of the party so that the jury may
9 more easily follow the testimony. The summation on
10 the other hand is the argument by counsel of evidence
11 in the case, focusing on that evidence which counsel
12 believes is important, offering theories on the part
13 of the defendants showing exculpability which means
14 arguments that the government failed to prove guilt
15 beyond a reasonable doubt and on the other hand, the
16 theories of inculpability by the government, arguing
17 from the evidence that the government proved guilt
18 beyond a reasonable doubt. You are not required to
19 accept any theory offered; obviously, you can't accept
20 all theories that are offered. If one of the
21 theories seemed attractive, it's the expectation
22 that it will be an aid in arriving at the truth and
23 that's really your function in examining the evidence.

24 Statements made by the Court, if I made any,
25 is not evidence in the case and I might say, parentho-

1 tically, that you must not attach any special signifi-
2 cance to questions the Court asked. At times if I felt
3 an area of the evidence was a little confusing to me, I
4 thought it might be confusing to you too, so I asked
5 some questions that were designed to clear it up.
6 That was the only purpose. Matter stricken from the
7 record is not evidence in the case, as I directed the
8 reporter to strike it from the record, physically, so
9 I direct you to strike it from your mind and recollection
10 and, of course, from your consideration. At times,
11 objections were sustained as to questions. You may
12 not speculate on what the answers might have been if
13 the Court permitted the witness to answer for the same
14 reason the witness did not answer that question, it
15 did not get into the record and you can't speculate
16 on what the answer might have been if it did get into
17 the record.

18 Now from what I've said so far, and what I
19 said throughout the trial, it should be obvious to you,
20 that each one of us plays a particular role in the
21 trial. Each one of us has a separate niche out out in
22 authority and function in the trial and each recognizes
23 each other's role in the trial. I think it would be
24 helpful to note for example that the lawyers are
25 adversaries. Take, for example, the issue of criminal

1 intent which has been underscored as the vital issue
2 in the case. The government said that these goods
3 were possessed by the defendants knowingly, which
4 means they knew that the Schick products were stolen.
5 The defendants, on the other hand, argue that there
6 was no criminal intent, that the goods were possessed
7 innocently, even if negligently, nevertheless not
8 criminally. So, there you have two sides on an issue
9 in the case. There are other issues, but this is the
10 critical issue and that's why a trial is called an
11 adversary proceeding. It's the lawyers who are
12 adversaries, and the theory is that if lawyers of
13 comparable ability litigate over an issue, the evidence
14 will develop during the trial for the jury to see.
15 But, the lawyers are recognized as protagonists.
16 They represent clients; they represent positions, they
17 represent causes and they perform best when they
18 perform it with zeal. They are obviously partial to
19 their cause. That distinguishes their role from that
20 of the Court and jury.

21 The Court and jury are objective, dispassionate.
22 We are both judges, one has no higher or more
23 important task than the other. Mine is the judge of
24 the law, as judge of the law, my rulings are final,
25 the lawyers must accept it and you must accept the

1 charge as I charge you. You may disagree with the law,
2 I'll be reading the statutes to you soon; you may
3 disagree with the principle of the law as I charge it,
4 but you have a duty to accept it. The idea being that
5 if juries throughout the country accepted the law as
6 it's uniformly charged, it's uniformly applied, it
7 isn't based on the whim of a particular individual, it
8 gives the law stability and predictability. I didn't
9 legislate the law and I didn't develop the law. I'm
10 giving it to you as I understand it, and as it has been
11 developed, as it has been enacted and so as I give it
12 to you, you must accept it.

13 You on the other hand have an obligation of find-
14 ing the facts. You are the sole judges of the facts.
15 You and you alone will decide the issue as to what
16 occurred, as to what occurred in February on the so-
17 called Whitehall delivery of aspirin and you and you
18 alone will decide all the fact issues of this case,
19 including the issue of criminal intent, possession
20 of the goods. Was it with criminal intent, knowing
21 that it was stolen or was it without criminal intent?
22 Did the Government prove its case by proving beyond a
23 reasonable doubt all fact issues. Applying your
24 finding to the law as I charge it, you will then
25 come to the ultimate verdict in the case as to both
counts in this indictment as to each individual.

1 You heard both lawyers argue about the different
2 types of evidence and I'll give you two general classi-
3 fications, and I know Mr. Youtt talked about circum-
4 stantial as distinguished from hearsay. I make a
5 different type of classification. There are only two
6 types of evidence, it's either direct or circumstantial.
7 Circumstantial is sometimes called indirect. Direct
8 evidence is the testimony of a witness of what that
9 witness saw or heard as to a particular fact. It is
10 necessary to identify the fact that is in issue, the
11 fact that's in dispute. Circumstantial evidence on
12 the other hand is the method of proving or disproving
13 a disputed fact by drawing an inference based upon
14 experience and common sense from established facts.
15 Now, that's a rather difficult concept to understand
16 and I will give you an example. You heard Mr. Youtt
17 talk about someone coming through the door with a
18 raincoat dripping, an umbrella and boots and so forth, and
19 from that inferring that it was raining outside and
20 that's one of the stock examples given. I have
21 adopted and developed one of my own that may more
22 clearly point out the difference. I will give you a
23 hypothetical situation, you assume that you are
24 sitting here as a jury in a personal injury case and
25 Mrs. A. is suing Mr. B. Mrs. A claims that Mr. B

1 passed the stop sign on a particular day at a particular
2 corner and struck her and caused her serious injury.
3 Mr. E says general denial just like here, not guilty
4 in a civil case, general denial. "I did not pass the
5 stop sign, I stopped and then I proceeded." You have
6 to identify the issue and that's clear. The plaintiff
7 says the defendant passed the stop sign without stopping
8 and the defendant says, "No, I stopped and then pro-
9 ceeded." Let's assume as I have done many times in
10 the past, that my courtroom deputy, Mr. Adler and my-
11 self were standing on the particular corner when this
12 particular accident happened where the stop sign was
13 erected. And let's assume I had my back to the stop
14 sign. He was facing the roadway and facing the stop
15 sign. Well, he's talking with me and he sees this
16 1977 white Cadillac speeding at 70 miles an hour past
17 the stop sign and strike Mrs. A. Now he saw, that's
18 direct testimony of that issue. He's called to the
19 stand, the lawyer asks the question, "Where were you,"
20 "What time was it," "Who were you with," "What were
21 you doing," "What were the lighting conditions" and
22 all the other surrounding circumstances and then he
23 asks the question that's directly in point, "Did you
24 see the moving vehicle pass the stop sign?" "Yes."
25 That's clear direct testimony. He might testify that

1 he saw the car going 70 miles an hour and then pass
2 the stop sign, but the point is he gives direct
3 testimony on that issue.

4 I had my back to the stop sign so I couldn't
5 very well give direct testimony, but I might very well
6 give testimony of the circumstances from which the
7 jury might reasonably infer that, that moving vehicle
8 passed the stop sign. I might say yes, I was talking to
9 Mr. Adler, "I turned to my right and through my
10 peripheral vision I saw this 1977 white Cadillac
11 traveling at 70 miles an hour pass behind me. About
12 three or four seconds later and about 150 feet later
13 when the car had traversed 150 feet, I saw the white
14 Cadillac again at the same speed and struck Mrs. A."
15 Now, from those circumstances I think you might
16 reasonably infer from my testimony alone, that that
17 motor vehicle passed the stop sign without stopping; in
18 other words, here was the motor vehicle proceeding at
19 70 miles an hour, traversed 150 feet in three or four
20 seconds, then when I turned to the left I saw it pro-
21 ceeding at the same rate of speed and struck the
22 plaintiff. So from those circumstances, those
23 established facts, the speed of the car that was seen
24 again at the same speed that you can infer that it did
25 not slow down, it traversed 150 feet in three or four

seconds, those are the circumstances. Any reasonable person using their good common sense and experience would infer that, that motor vehicle past the stop sign without stopping.

The law does not regard one type of evidence as of a better quality than the other. The law requires that on both types of evidence that both on the direct and circumstantial evidence, the government must prove every essential element of the crime charged beyond a reasonable doubt. I've used the term inference and I've used the term presumption. I will be using the term inference in telling you what inferences you may fairly draw from other facts as they're established. But, there is a difference between an inference and a presumption. The inference is a conclusion which reason, common sense leads the jury to draw from the facts which have been established by the evidence in the case. The jury may draw an inference, in other words, it's a discretionary thing, but based upon good common sense and experience, and the example of that, of course, is the method of proving or disproving a fact through circumstantial evidence. A presumption on the other hand is a conclusion which the law requires the jury to make and continues only so long as it is not overcome or outweighed by evidence in the

1 case to the contrary. But unless and until the pre-
2 sumption is so outweighed, the jury is bound to find
3 in accordance with the presumption and the example of
4 that, of course, is the presumption of innocence.

5 Lay witnesses may not testify as to what they
6 think or express an opinion or tell what their con-
7 clusion is about things. But an expert, who through
8 training, experience, has become skilled in some field,
9 may express an opinion and the example of that, of
10 course, is the handwriting expert that we had. Now,
11 in judging his testimony, the mere fact that he
12 qualifies as an expert doesn't mean that you should
13 take his testimony at face value; his testimony is
14 weighed like any other witness. I qualified him as an
15 expert so that he may express an opinion; you decide
16 the weight that is to be given to testimony of the
17 handwriting expert. You, the jurors, are the sole
18 judge of the credibility of witnesses, which means
19 the believability of their testimony and the weight
20 that their testimony deserves. Scrutinize the
21 testimony given and the circumstances under which each
22 witness testified to every matter in evidence which
23 tends to show whether the witness is worthy of belief.
24 Consider each witness' intelligence, consider each
25 witness' motive and state of mind. Motive means the

1 state of mind and what the witness is thinking as he
2 testifies, of his interest in the case and why he's
3 giving the testimony. All that goes into weight and
4 credibility. Take into consideration the demeanor and
5 manner of the witnesses while on the witness stand.
6 Is the witness answering questions directly? Is the
7 witness evasive? Is the witness giving a full and
8 forthright answer? The witness' own ability to observe
9 the matters to which he has testified. Whether he has
10 impressed you as having an accurate recollection of
11 those matters. Take into consideration how each
12 witness might be affected by the outcome of the case.
13 Take into consideration the relation the witness bears
14 to either side of the case. Take into consideration
15 the extent to which, if any, the witness is either
16 supported or contradicted by other evidence in the
17 case.

18 If a witness is shown to have knowingly testified
19 falsely concerning a material matter, you have the
20 right to distrust all such witness' testimony or you
21 may accept such part of a witness' testimony as you
22 recognize as being credible. That principle under-
23 scores the wide discretion the jury has in assessing
24 the credibility of a witness.
25 Called Mr. Cogar and Mr. Pollari, as I remember it,

1 were informants who had records of conviction. Are
2 you saying no, Mr. Corcoran, only one?

3 MR. CORCORAN: Only Mr. Cogar, your Honor.

4 THE COURT: Only Mr. Cogar?

5 MR. CORCORAN: Mr. Pollari had no record.

6 THE COURT: Then I did Mr. Pollari a disservice,
7 but then we will talk about Mr. Cogar. The testimony
8 of a witness may be discredited, impeached by showing
9 that the witness has been convicted of a felony which
10 means a crime that is punishable by more than one year.
11 Prior conviction does not render a witness incompetent
12 to testify, but is more or less a circumstance which
13 you may consider in determining credibility of a
14 witness. It is the province of the jury to determine
15 the weight to be given to any prior conviction. But,
16 both Mr. Pollari and Cogar were informants. The
17 testimony of an informant who provides evidence
18 against a defendant for pay, or for immunity from
19 punishment, or for personal advantage or vindication
20 must be examined and weighed by the jury with greater
21 care than the testimony of an ordinary witness. The
22 jury must determine whether the informant's testimony
23 has been affected by interest or by prejudice against
24 defendants. The government charges that when the FBI
25 faced Mor Werberberger with a possible charge of

possessing stolen merchandise, that he made certain exculpatory statements which means, statements that which tend to show that he was not guilty of that crime. Now, conduct of a defendant -- and this would refer only to the defendant who made the statement not to all the defendants -- conduct of a defendant including statements knowingly made upon being informed that a crime has been committed or upon being confronted with a criminal charge, may be considered by the jury in light of all other evidence in the case in determining guilt or innocence. When a defendant voluntarily and intentionally offers an explanation, or makes some statement tending to show his innocence and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily it is reasonable to infer that an innocent person usually does not find it necessary to invent or fabricate an explanatory statement tending to establish his innocence. Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt and the significance attached to any such evidence are matters exclusively within the province of the jury. Of course, a statement or act is knowingly done when the party is aware

that it is being done, and it's done voluntarily and intentionally, and not because of a mistake or accident or other innocent reasons.

A defendant who wishes to testify is competent as a witness; and you must judge his testimony in the same manner as any other witness. I'm about to read the indictment, or so much of it as indicates what the charge is. As I told you at the outset, the allegations in the indictment are not proof of the crime charged. The defendants have pleaded not guilty. The indictment is only the means or the method through which the law brings someone into court for trial; it, in a sense, sets the stage and shows what the issues are.

You are not to attach any significance to the fact that the indictment is brought in the name of the United States of America. The indictment contains two charges. One is called the conspiracy charge and that's based on a section of Title 18 Number 371.

Almost all federal law is codified and what the Congress defines as crime is usually under Title 18. The other section is what we call the substantive crime, that's Count Two. The charge is the knowing possession by the defendant and that's known as Section 659. I'll read the pertinent portion of Section 659. This is what the Congress said constitutes a crime.

1 "Whoever steals or unlawfully takes, carries away from"
2 I'm sorry. "Whoever steals or unlawfully takes, carries
3 away, obtains from any motor truck or other vehicles,
4 with intent to convert to its own use any goods or
5 chattels moving, or which are part of or which consti-
6 tute an interstate shipment of freight" commits the
7 crime which is commonly called hijacking.

8 The defendants are not charged with participating
9 in any way in the hijacking. I read that portion
10 because the possession charge refers back to goods
11 stolen while moving as part of a shipment of interstate
12 commerce. It's the next sentence, "Whoever buys or
13 receives or has in his possession any goods or chattels
14 knowing" and now I'm pausing there because that's the
15 one word that indicates the requirement of criminal
16 intent, "knowing the same to have been stolen" commits
17 the crime of possessing goods stolen in interstate
18 commerce. So, the substantive crime is based on a
19 particular section, Section 659 of Title 18. Now,
20 that refers to a specific type of crime and that's why
21 it's called substantive crime. The conspiracy statute
22 relates to the understanding, getting together in
23 order to commit any other crime and that's why we call
24 it the conspiracy statute, and it briefly reads as
25 follows: Section 371, "If two or more persons conspire

1 either to commit any offense against the United States
2 or to defraud the United States or any agency thereof,
3 in any manner or for any purposes and one or more of
4 any such persons do any act to effect the object of
5 the conspiracy" they commit the crime of conspiracy.
6 In other words, what the section says is that if two
7 or more people get together to commit any crime, and
8 one, thereafter knowingly commits an overt act for the
9 purposes of affecting the object of the conspiracy,
10 the crime of conspiracy is committed.

11 Count One of the indictment charges in pertinent
12 part as follows, and I'll paraphrase it to the extent
13 necessary: "On or about and between the 10th day of
14 March 1975 and the 19th day of March 1975, both dates
15 being approximate and inclusive, within the Eastern
16 District of New York, the defendants, Chaim Kahan,
17 Solomon Werchberger and Mor Werchberger did knowingly,
18 willfully and intentionally" and there again, it's
19 the criminal intent. Criminal intent and conduct --
20 that's two major ingredients of a crime -- the state
21 of mind to do it, the criminal intent and the act.
22 Here is what the charge is and this is what the charge
23 says, they "knowingly and intentionally did conspire,
24 confederate and agree to with themselves and with
25 Manuel Gomez, Stanley Diamond, Vincent Santa, also

known as Jimmy Santa, Frank Joseph Maloney and the others not named herein, to commit an offense against the United States in violation of Title 18, U.S. Code Section 659, in that they did knowingly and willfully conspire to receive and have in their possession approximately 5072 cartons of Schick shaving products having a value in excess of \$100, which goods were stolen from a tractor-trailer while moving as part of and constituting an interstate shipment of freight from West Haven Connecticut to Anaheim California. In furtherance of said conspiracy and to effect the object thereof, the following overt acts among others were committed within the Eastern District of New York. One, on March 10th 1975 the defendant, Manuel V. Gomez rented a 1975 Plymouth Fury from National Car Rental Systems, 160-14 Hillside Avenue, Jamaica New York. Two, on March 13 1975 the defendants, Chaim Kahan, Solomon Werberger and Mor Werberger received approximately 5072 cartons of Schick shaving products at their warehouse, known as CBS Warehousing, 358 50th Street Brooklyn, New York. Three, on March 14th, 1975 the defendants, Manuel V. Gomez, Vincent Santa also known as Jimmy Santa, and Stanley Diamond met at 1115-33 Lefferts Boulevard, Queens New York to discuss the receipt of payment for such stolen products."

1 That's the conspiracy charge in the indictment. That's
2 the agreement to get together with others for the
3 purposes of receiving and having in their possession
4 5072 cartons of Schick shaving products. The second
5 count, a separate and distinct count, involves the same
6 5072 cartons, but this is the actual possession, not
7 the agreement, the understanding to possess these Schick
8 products but its actual possession and the charge is as
9 follows: "On or about the 13th day of March 1975 within
10 the Eastern District of New York, the defendants,
11 Chaim Kahan, Solomon Werberger and Mor Werberger
12 did willfully and knowingly receive and have in their
13 possession approximately 5072 cartons of Schick Company
14 products having a value in excess of \$100, which goods
15 had been stolen from the Time DC Trucking Corporation,
16 truck bearing California license plate WY 6336 while
17 moving as part of and constituting an interstate ship-
18 ment of freight from West Haven Connecticut to Anaheim
19 California, the defendants knowing the same to have
20 been stolen."

21 You will notice in both cases the charge talks
22 about moving in interstate commerce and the reason its
23 in there is that's what makes it a federal crime.
24 That's what we call the jurisdictional handle. That's
25 why it's in the Federal Court because the charge is

1 that the goods were moving in interstate commerce
2 when they were stolen.

3 A conspiracy is a combination of two or more
4 persons organized to accomplish some unlawful purpose,
5 in this case, to receive and possess goods stolen in
6 interstate commerce. Conspiracy is the crime of
7 partnership in criminal purposes in which each member
8 of the conspiracy becomes the agent of every other
9 member during the term of the conspiracy and while
10 acting to advance the purposes of the conspiracy.

11 It's very similar to a lawful partnership
12 where in a lawful partnership, each partner is the
13 agent of the other partners for the purposes of the
14 partnership, for acts and declarations made during the
15 term of the partnership. The mere similarity of
16 conduct among various persons and the fact that they
17 may have been associated with each other or may have
18 assembled together and discussed common aims and
19 interest does not necessarily establish proof of the
20 existence of the conspiracy. Here, there is no
21 question that the three defendants were in business
22 together at CBS so it's very natural and normal for
23 the three partners to be together in their business at
24 CBS, so the mere fact that they were together, they
25 conferred together, acted together doesn't necessarily

1 constitute a conspiracy. However, the evidence in
2 the case need not show that the parties entered into
3 a formal agreement to commit the unlawful act, but the
4 proof must show beyond a reasonable doubt that through
5 some contrivance or through some common understanding
6 the parties entered into the conspiracy and that they
7 acted in such a way, separate and apart from their
8 legitimate business, that they understood that their
9 agreement was to accomplish the unlawful purposes.

10 How does one become a member of the conspiracy?
11 One can become a member of the conspiracy without full
12 knowledge of all the details; on the other hand, a
13 person who might act innocently but advance the
14 purposes of the conspiracy doesn't thereby become a
15 member of the conspiracy. If, for example, you were
16 driving your car one day and someone asked for a lift
17 and he happened to have some stolen merchandise in his
18 possession and you drove him down the block to meet
19 someone to make a sale of the stolen merchandise, that
20 you knew nothing about the purpose of his mission but
21 just drove him down, you are advancing the purposes
22 of the conspiracy; but you wouldn't be a member of the
23 conspiracy. On the other hand if somebody hopped into
24 your car and said, "Buddy, help me out, I've got some
25 hot stuff and I want to get rid of it. Will you drive

1 me down the block and help me to meet this buyer so I
2 can sell it?" Then you become a member of the conspiracy.
3 There's an example of the requirements of criminal
4 intent in order to bring a party in the conspiracy.

5 Before a jury may find an accused has become a
6 member of the conspiracy, the evidence in the case must
7 show beyond a reasonable doubt, that the conspiracy was
8 knowingly formed and the defendant or the accused
9 knowingly and willfully participated in the unlawful
10 plan with the intent to advance some purposes. In
11 other words, the jury must find that the government
12 proved beyond a reasonable doubt that a defendant
13 knowingly participated in it, knew that he was advancing
14 the purposes of the conspiracy. In this case when we
15 talk about the conspiracy to receive and knowingly
16 possess, proof that one or more of these defendants
17 or the accused handled the merchandise or stacked the
18 merchandise, or made records out, internal records, or
19 gave invoices out, does not prove either the conspiracy
20 or knowing possession of the merchandise. The govern-
21 ment would have to prove that the accused knew that the
22 goods were stolen, knew that the Schick products were
23 stolen and the movement of the goods, or the making of
24 the bill or the giving of the invoices was done knowing
25 that it was stolen.

1 These defendants are charged with being part of
2 a conspiracy commenced the indictment says on or about
3 March 10th. Apparently, the merchandise as I recall
4 the testimony, wasn't delivered to the premises until
5 March 12th. One who willfully joins an existing con-
6 spiracy is charged with all the acts of the conspiracy
7 from the date of its commencement and he bears the same
8 responsibility as if he were one of the originators or
9 instigators of the conspiracy. In determining whether
10 the accused became a member of the conspiracy, the
11 government must prove that the acts which brought the
12 accused into the conspiracy must be proven to have
13 been done knowingly and willfully, in other words,
14 aware that it was for the purposes in dealing in stolen
15 merchandise, stolen Schick products and that the act
16 was done deliberately, and intentionally and voluntarily
17 and not through any negligence, or accident, or in-
18 advertently even stupidity, and I'll add on to that,
19 not even gross negligence; we are talking about a crime.
20 The government must show beyond a reasonable doubt
21 that the party performing the act performed the act
22 knowing that he was dealing with stolen merchandise.
23 If the government hasn't proved that beyond a reason-
24 able doubt, you must find the defendant or the accused
25 not guilty. And the evidence that you may consider in

1 making that determination is independent evidence,
2 independent of any hearsay evidence, it must be
3 evidence by a witness of what he saw that particular
4 accused do with reference to the stolen goods.

5 Now obviously, intent is something which can
6 rarely, if ever, be proven by direct evidence, intent
7 is a state of mind. You must make the determination
8 as to whether the accused acted with criminal intent;
9 that can only be proven by circumstantial evidence.
10 I charged you during the trial on how to treat acts
11 and declarations of others who are alleged to be
12 members of the conspiracy. As I said, a conspirator
13 who is really a partner in a criminal conspiracy, is
14 the agent of every other conspirator in that conspiracy.
15 An accused is chargeable with the act and declarations
16 of conspirators if the government proves beyond a
17 reasonable doubt that the individual who made the act
18 or declaration, or performed the act or declaration
19 was a member of the conspiracy. Of course, they must
20 first establish the conspiracy beyond a reasonable
21 doubt and if it's proved beyond a reasonable doubt
22 that the accused knowingly and willfully entered into
23 the conspiracy, then the accused is chargeable with
24 the acts and declarations of a coconspirator. If the
25 government hasn't proved that beyond a reasonable

1 doubt, then you may not charge an accused with those
2 acts and declarations. But the defendant or accused
3 is chargeable with acts or declarations made only during
4 the term of the conspiracy, and those acts and declara-
5 tions made to advance the purposes of the conspiracy,
6 to receive and possess stolen goods.

7 In this connection we come to the testimony of
8 Stanley Diamond, who a witness said --

9 MR. YOUTT: Cogar.

10 THE COURT: (Continuing) Cogar said with reference,
11 with reference to the fact that some rabbis were stand-
12 up guys and then something about, later on I think,
13 something about payment of money. Well, the defendant's
14 position is that even if the evidence shows that these
15 parties, these accused were members of the conspiracy,
16 that testimony cannot be charged against them because
17 they were placed under arrest, and as far as they were
18 concerned they were no longer members of the conspiracy,
19 and even if Diamond were proved to be a member of the
20 conspiracy, he can only bind those that were members
21 of the conspiracy at the time and this was after
22 arrest of the defendant, and they were no longer
23 members. But, whether or not the defendants were
24 members of the conspiracy or continued to be after
25 their arrest, are fact questions for the jury. You

1 take into consideration the purpose and object of the
2 conspiracy, and you determine whether this was really
3 a sale of the goods as the government contends and if
4 it was the sale of the goods, whether payment for the
5 goods was part of the purpose of the conspiracy, and
6 whether they still were part of the conspiracy for
7 those purposes. But, again I say, that is a fact
8 question. If you find against the government on the
9 issue and in favor of the defendants, that after the
10 arrest the defendant could not have been part of the
11 conspiracy, then whatever Diamond said even if he
12 were a member of the conspiracy, cannot be charged
13 against them, no longer an act, no longer a part of it.
14 Of course, I caution you that you must also find from
15 the evidence that Diamond was a member of the conspiracy.
16 If he was not a member of the conspiracy then, of
17 course, what he said cannot in any event be charged to
18 these defendants. So, when we talk about acts and
19 declarations of co-conspirators made outside of the
20 presence of the accused, it's important to remember
21 that in order to charge the accused with acts and
22 declarations of co-conspirators made outside of their
23 presence, the government must prove beyond a reasonable
24 doubt: one, that the conspiracy charge in the indict-
25 ment is established, that means for the purpose and

1 for during the term; and two, that the declarant
2 who made the statement was shown to be, to have
3 knowingly and willfully entered into that conspiracy
4 and be a member of it; three, that that act and declaration
5 was made during the term of the conspiracy and to
6 advance the purpose of the conspiracy. Then the
7 accused may be charged with those acts and declarations
8 if the government proves beyond a reasonable doubt,
9 that the accused knowingly and willfully entered into
10 the conspiracy. And again I say, that can be based
11 only on independent testimony of witnesses as to what
12 the accused said or did.

13 Now in addition to proving the conspiracy and
14 entrance of an accused into the conspiracy, the govern-
15 ment must prove beyond a reasonable doubt that one of
16 the conspirators, doesn't have to be the defendant
17 accused, that one of the conspirators there knowingly
18 committed one of the overt acts alleged in the indict-
19 ment and I read the three overt acts. An overt act is
20 something that you can see, that's visible, and that's
21 a significant step to advance the purpose of the con-
22 spiracy; it has to be one of the three alleged in the
23 indictment.

24 To recapitulate, the government must prove that
25 the conspiracy existed as alleged, it must prove that

1 the accused knowingly and willfully entered into the
2 conspiracy and it must prove an overt act. On the
3 possession count it must prove that the accused
4 knowingly and willfully possessed merchandise which
5 means that he knew the merchandise was stolen. I might
6 say that the possession can be actual or constructive.
7 An actual possession means that the party had full
8 domination or control over the item. I have actual
9 possession of my glasses, constructive possession
10 means that I have it elsewhere, but I have a right to
11 possession at any time. If my glasses were in my
12 chambers I wouldn't have actual possession but I still
13 have dominion and control over the glasses, I have the
14 right to obtain actual possession. Possession can be
15 single, joint; if it's held by one it's single, or
16 several if it's held by more than one. If it is joint,
17 one party may have actual possession jointly with
18 another who might have constructive possession.

19 I'll list for you the elements which the govern-
20 ment must prove beyond a reasonable doubt in order to
21 establish the conspiracy. Count One of the indictment;
22 one, that the conspiracy charged in the indictment
23 existed for the purposes and during the time alleged.
24 Two, that the accused knowingly and willfully entered
25 into the conspiracy. Three, that thereafter one of

1 the conspirators knowingly performed one of the overt
2 acts alleged in the indictment in furtherance of the
3 conspiracy. That's what the Government must prove as
4 to count 1. As to count 2, the Government must prove
5 beyond a reasonable doubt, one, the act of stealing or
6 carrying away from a motor truck Schick products on or
7 about March 11, 1975 while moving in or as a part of an
8 interstate shipment. Two, that such acts were
9 committed unlawfully with intent to convert the Schick
10 products to the use of the thieves. In other words,
11 to deprive the rightful owner of his property. Three,
12 the act of possessing the Schick products, in other
13 words, exercising dominion and control over the Schick
14 products. Four, that the act of possession was
15 knowingly done. Now, an act is knowingly done if it is
16 done voluntarily and intentionally.

17 I may want to define some of the terms I've
18 used. Interstate shipment, the interstate character
19 of the property stolen is an essential element of the
20 offense. The property must either be moving in or be
21 part of an interstate shipment at the time of the
22 theft. The interstate character of the shipment
23 commences when the property is segregated for inter-
24 state shipment and comes into the possession of those
25 who assisted its course in interstate transportation,

1 and continues until the property arrives at its
2 destination. Interstate shipment means originating in
3 one state for destination in another state. Now, the
4 statute provides that the shipping document shall be
5 prima facie evidence of the place from which and to
6 which such shipment was made. In other words, shipping
7 documents are offered to show the interstate character
8 of the shipment. I think I defined attempt to convert
9 to its own use, it means to appropriate or use the
10 property and deprive the owner of its use.

11 The fact that the property was recovered is not
12 material. The government offered evidence of a recovery
13 by the FBI on February 5th of some aspirin or other
14 drugs allegedly owned by Whitehall. This evidence was
15 offered as evidence of a prior similar crime. I don't
16 pass on that, you'll decide whether there was a prior
17 crime, whether there was a prior theft or other unlaw-
18 ful deprivation of property by one party of another's
19 property and in this case, Whitehall. When evidence
20 of other crimes is offered, it has limited use. You
21 may not convict a defendant for the crime charged where
22 it hasn't been proved, because you think that he did
23 commit another crime. The defendant is required only
24 to prepare and defend on the crime for which he is
25 charged. In this case you may use proof of a prior

1 crime if you think a prior crime was committed on the
2 issue of criminal intent. For example, if you think
3 the evidence shows beyond a reasonable doubt that the
4 accused unlawfully possessed and knowingly possessed
5 the Whitehall aspirin on or about February 5th, then
6 you may use that as evidence on the issue of intent as
7 to whether, in this case, in the crime charged in this
8 indictment, the accused was aware that the Schick
9 product was stolen. It may be used for only that
10 limited purpose.

11 We talked about the inferences which may be
12 drawn from established facts. Possession of property
13 recently stolen if not satisfactorily explained is
14 ordinarily the circumstances from which the jury may
15 reasonably draw the inference and find in the light of
16 surrounding circumstances shown by the evidence in the
17 case, that the person in possession knew the property
18 had been stolen. Possession of property recently
19 stolen if not satisfactorily explained, strike that.
20 I'll stop at that inference which may be drawn concern-
21 ing criminal intent from possession of recently stolen
22 property. Now, the term, "recently," is a relative
23 term and has no fixed meaning; whether property may be
24 considered recently stolen depends on the nature of
25 the property and of all the facts and circumstances

1 shown by the evidence in the case. The longer the
2 period of time since the theft, the more doubtful
3 becomes the inference which may be reasonably drawn
4 from unexplained possession. If you find beyond a rea-
5 sonable doubt from the evidence in the case, the Shick
6 products described in the indictment were stolen, and
7 that while recently stolen the property was in the
8 possession of the accused, you may draw the inference
9 from those facts that the accused had knowledge that
10 the property was stolen.

11 It is the exclusive province of the jury to
12 determine whether the facts and circumstances shown
13 by the evidence in the case warrant any inference
14 which the law permits you to draw from possession of
15 recently stolen property. If any possession the
16 accused may have of recently stolen property is as
17 consistent with innocence as with guilt or if you
18 entertain a reasonable doubt of guilt, you must acquit
19 the accused.

20 Now, your verdict in the case must represent
21 the considered opinion of each juror. In other words
22 to return a verdict, it is necessary that each juror
23 agree on the verdict, the verdict must be unanimous.
24 Each juror must arrive at a verdict independently
25 through his own mental processes, based on the

1 evidence. It would be improper for any juror to
2 abandon the obligation and leave it to the rest of the
3 jury, the duty of deciding the case. You must do your
4 own job in this case. It's equally improper for any
5 juror to take an intransigent view and refuse to dis-
6 cuss the case with the other jurors. In other words,
7 it's improper for the juror to come into the jury room
8 and say, "I have an opinion on this, this is final
9 and I refuse to talk about it." That's wrong. The
10 jury process is a deliberative process. It is an
11 exchange of views based on the evidence in the case.
12 During your deliberations you may have occasion to ask
13 for testimony and exhibits, and in this case testimony
14 is not transcribed and it will take some time for the
15 court reporter to locate the testimony you want. All
16 your notes will come through the foreman to a marshal
17 who will be assigned to you and then to me, and I'll
18 take the matter up with the lawyers. If you can give
19 us the name of a witness or at least the subject
20 matter, it will make it easier to find.

21 During your deliberation you are not to disclose
22 to me how you stand as to any defendant as to either
23 count of the indictment; don't tell me you stand six
24 to six or ten to two. When you have a verdict I expect
25 the foreman of the jury will send me a note through

1 the marshal, saying, "We've arrived at a verdict."
2 I don't want to know what the verdict is. When you
3 have arrived at a verdict I will call you into the
4 courtroom, and in effect, I will say, "In the case of
5 the U.S. of America against Chaim Kahan, Solomon
6 Werchberger and Mor Werchberger, how do you find the
7 defendant Chaim Kahan as to Count Number One," and
8 the foreman will stand and tell me. "How do you find
9 the defendant, Solomon Werchberger as to Count One" and,
10 "How do you find the defendant Mor Werchberger as to
11 Count One," and you will announce the verdict and then
12 I will go on to Count Two, and you will do the same,
13 and then I will go to Juror Number 2, 3 and so on until
14 12, and when I have got 12 verdicts in open court in
15 agreement, then for the first time we have the verdict
16 of the case and not before.

17 I would like you to take leave of the courtroom
18 for a few moments. Of course, don't discuss the
19 matter. I want to take a few minutes up with counsel
20 and then I will call you back into the courtroom.

21 (Jury excused from the jury box.)

22 THE COURT: I wanted to note that during the
23 charge I realized I hadn't made a note on the essential
24 elements of the conspiracy, I just had concentrated on
25 the substantive count, and I went looking for it and

1 sure enough, it wasn't there; but, I think I've charged
2 it so many times I've gotten it right.

3 Are there any exceptions or additions to the
4 charge?

5 MR. CORCORAN: Your Honor, I had some problems
6 with the charge and I indicated them earlier and I would
7 just like to make the note of them again. With reference
8 to your Honor's charge that in order to find the
9 defendants part of the conspiracy you must find inde-
10 pendent evidence, your Honor implies that in fact, I
11 think directly told the jury, they had to find direct
12 evidence as to that and I don't believe that's true;
13 circumstantial evidence is independent evidence of
14 participation and your Honor said witness must testify
15 what he saw the defendant say with reference to the
16 stolen goods, and I don't believe the law of the con-
17 structive possession of the goods alone is independent
18 evidence of participation, participation in the con-
19 spiracy. If the defendant can be guilty of possession,
20 based upon that, from the inference they can certainly
21 be guilty of the conspiracy when the possession is in
22 connection with the other people, and I think the jury
23 is led to believe they must find direct evidence and I
24 think that holds the government up to an impossible
25 standard.

1 THE COURT: No, I don't think it's inconsistent
2 with what you're saying, at all. You just want me to
3 give another summation in my opinion, you want me to
4 say that possession of the goods itself is direct
5 evidence of participation in the conspiracy.

6 MR. CORCORAN: Possession of the goods is
7 independent evidence of participation of the conspiracy,
8 that's the law. But, whether your Honor has suggested
9 is there must be direct testimony as to the defendants,
10 as to what they did, and --

11 THE COURT: That's right. Well, in other words
12 the handling of the goods by these defendants were
13 possession of the goods.

14 MR. CORCORAN: I don't believe that's the connota-
15 tion that the jury would draw from what your Honor said.
16 What the witness said was he said what he saw the
17 defendants do with respect to the stolen goods, and
18 that implies something more than possession.

19 THE COURT: Let me ask you this; do you think
20 one of these defendants could be convicted merely
21 because he was part of CBS?

22 MR. CORCORAN: No, no.

23 THE COURT: Then what are we talking about then?

24 MR. CORCORAN: It's because he was in possession
25 of the stolen goods he could be convicted, and that

1 doesn't require direct testimony as to what --

2 THE COURT: All right, but I think you are
3 avoiding the question of possession; how do you prove
4 possession, by just the proof that these defendants
5 were together at CBS, that they were stockholders or
6 officers?

7 MR. CORCORAN: No, your Honor. I think if it
8 would meet with your understanding, the evidence of
9 seeing them on the unloading dock and taking the load
10 in, that alone would be sufficient --

11 THE COURT: I think so.

12 MR. CORCORAN: But when your Honor talks of it
13 in context of the conspiracy charge, and statements of
14 co-conspirators, there's an implication that there
15 must be something more than some extrinsic evidence
16 that what the defendant said, had been in connection
17 with the conspiracy, that they were a member of the
18 conspiracy, something on direct testimony that they
19 knowingly and willfully joined the conspiracy and my
20 understanding of the law is that a conspiracy count
21 is made out almost always when you have a substantive
22 count made out where two or more --

23 THE COURT: I thought it was the reverse, that
24 the substantive count is submitted during the term
25 of the conspiracy, and while the defendant was a

1 member of the conspiracy, and not the other way --

2 MR. CORCORAN: Well, that's one way to look at
3 it.

4 THE COURT: I believe that's Pinkerton.

5 MR. CORCORAN: But, when you have a multiple-
6 defendant count --

7 THE COURT: I think it's hard to separate it.
8 I agree, but that's not a criticism of what I said,
9 but -- if I could, we still have time, get me all of
10 the opinions that just came down, I think I put them
11 on the law clerk's desk, there is one in there by
12 Judge Friendly on the difference between Geaney and
13 Jackson. You will notice that I placed the burden of
14 proof beyond a reasonable doubt, and I think I went
15 further than Guernsey only to play it safe because
16 Geaney has been questioned in other circuits. You
17 know, I was under the impression that the Supreme
18 Court had the question as to whether you prove guilt
19 in effect by a preponderance of the evidence. Prepon-
20 derance of the evidence is a determination made on
21 evidence questions, but on criminal liability, I
22 always felt that the burden had to be proved beyond a
23 reasonable doubt, so when it comes to bringing someone
24 into the conspiracy, I have always felt that yes, the
25 act had to be the direct evidence. I don't like to

1 use direct, because I see it differently, and the
2 distinction I made between direct and circumstantial,
3 if I use direct in context I think it would be confusing,
4 so I used independent, independent of the hearsay, yes,
5 you must have evidence independent of hearsay and what
6 you're saying is they wouldn't understand is that the
7 handling of the goods was possession, yet the handling
8 of the goods is direct evidence of a participation.

9 I think that's a matter of whether they will
10 understand the evidence and understand your summation.
11 I'm afraid that if I started to say to them well now,
12 you know when I talked about direct independent
13 evidence that includes the possession of goods, and --

14 MR. CORCORAN: I would state that if your Honor
15 would instruct them independent evidence can be direct
16 or circumstantial, but you know, when your Honor
17 defined that you defined it in the same terms as you
18 defined direct evidence, and quite honestly, I don't
19 believe the jury would consider circumstantial evidence
20 under that charge. It's circumstantial evidence, as
21 sufficient --

22 THE COURT: Yes, circumstantial evidence that
23 draws upon the direct evidence of the defendant's
24 activities. In other words, from what these defendants
25 did in handling the goods, they could infer from that

1 that they possessed the goods and that they were part
2 of the conspiracy.

3 MR. CORCORAN: That's correct.

4 THE COURT: We're saying the same thing then.

5 MR. CORCORAN: I'm just concerned with the way
6 the jury would --

7 THE COURT: I was just -- we have here the
8 United States against Stashish which was before Judge
9 Friendly, and this is in order to save time, and as
10 distinguished between the United States against Geaney
11 and the United States against Taylor, and also in the
12 United States against Oliva, 497 Fed. 2d., I think
13 it's 130, Fifth Circuit, and the Fifth Circuit has
14 adopted the standard more stringently than that in
15 Geaney,, namely that a declaration of a conspirator
16 may be admitted only if the independent evidence alone
17 would support a jury finding of conspiracy.

18 MR. CORCORAN: I am not concerned with standards
19 of proof, such as the type of evidence that would be
20 allowed.

21 THE COURT: All right, but half the time
22 independent evidence is used again and --

23 MR. CORCORAN: Independent evidence, I agree
24 with your Honor, but independent of the hearsay state-
25 ments.

1 THE COURT: I don't know how to explain it, but
2 I think any explanation I give would be in effect
3 summation for the government and I won't do that.

4 MR. CORCORAN: I disagree, your Honor. I don't
5 think it's a summation to tell the jury what the law is.
6 The government's proof happens to be consistent with
7 the law and I don't think your Honor is dealing for
8 the government. Now the other point that I would like
9 to raise is with regards to the possession of the
10 Whitehall products. Again, I raised this earlier. I
11 don't think that the government is limited to putting
12 that in as proof of a prior crime, with all the
13 implication surrounding proof of a prior crime, it's
14 also independent probative and relative evidence as to
15 what the defendants knew about products that were in
16 their warehouse the month before, even if they had not
17 been guilty of knowingly and willfully possessing
18 those products in the month before, in violation of the
19 law, and at that point they had been instructed that
20 the quantity of goods that came into their warehouse
21 were stolen products because they had come in by a
22 certain method and under certain documents.

23 THE COURT: No, I'm sorry. I will not so charge
24 because that is saying something different. The very
25 purpose of introducing evidence of a prior crime is to

1 show he did it before, and when he took it this time
2 he must have known and, therefore, he intentionally
3 possessed it knowingly. If he took it innocently the
4 first time, you are saying now that the mere fact that
5 it turns out to be stolen is enough to prove intent.

6 MR. CORCORAN: What I'm saying Judge, is that
7 this evidence can also be viewed the same as you would
8 view evidence of proof that someone had said to Mor
9 Werchberger, Solomon Werchberger and Chaim Kahan a month
10 before, be careful of Manny Gomez, he deals in stolen
11 merchandise. Now, that doesn't indicate that they had
12 committed a crime with Manny Gomez in February, but
13 it's relevant evidence as to what they knew in March.

14 THE COURT: That's a different type of evidence,
15 that doesn't arise because of the innocent possession.
16 I am trying to think of other instances --

17 MR. CORCORAN: It arises --

18 THE COURT: God help us if your theories were
19 adopted, because in any large business where supervision
20 is left to underlings, what you're saying is that every
21 time a business has merchandise, or some other crime
22 is committed without the organization knowing it, and
23 it turns out that the government can show that it
24 happened two, three, five or ten times, or fifty times,
25 that even though it was innocently done, the mere fact

1 that the government said to them, you know this was
2 stolen, that is enough to put them on notice, that if
3 it happens again they have committed a crime, and
4 isn't that what you're saying?

5 MR. CORCORAN: Essentially where the defendants
6 themselves had not left the loading of these products
7 to their underlings, but they themselves participated
8 in it, they were instructed that the goods were stolen
9 five weeks before.

10 THE COURT: Mr. Corcoran, you know you're taking
11 this instance of five weeks before. Let's assume that
12 you're in business, forget about these defendants and
13 you've got a warehouse, and let's assume you're running
14 it in the most ethical, perfect manner, but you know
15 there are mistakes and somebody comes in and gives you
16 stolen merchandise. Let's say it's not a month later,
17 let's say it's a year later and somebody else, un-
18 related, different type of merchandise, different man,
19 different transaction does the same thing to you.
20 You want to introduce the first transaction when you
21 have no question about it that it was perfectly
22 innocent.

23 MR. CORCORAN: There is a whole different set
24 of facts here, your Honor.

25 THE COURT: No, it's not. It's extending the

1 hypothetical case, that's all it is.

2 MR. CORCORAN: We have evidence in this case
3 that it came from the same source.

4 THE COURT: But, you see now you are not counting
5 on the fact that it's a prior act that --

6 MR. CORCORAN: Exactly.

7 THE COURT: What you want to do is, you want to
8 use a prior innocent act that's similar on criminal
9 intent and I don't think the law has gone that far.

10 MR. CORCORAN: If I can comment, your Honor.
11 The similar act is limited because of the prejudicial
12 effect of a crime, because it might suggest in the
13 jury's mind that they have committed this crime --

14 THE COURT: That's right.

15 MR. CORCORAN: And, if the prior conduct was
16 not criminal, there is no limitation as to what you
17 could admit, if the prior non-criminal act --

18 THE COURT: Then that makes it irrelevant.

19 MR. CORCORAN: No, if it's probative and
20 relevant.

21 THE COURT: That's a big if, but we say it's not
22 relevant in this case. The only reason it would be
23 relevant is on criminal intent and if they didn't
24 have notice of it before, it can't be relevant on
25 criminal intent, at all.

1 MR. CORCORAN: And I'd suggest, I agree with you,
2 but the evidence of the same parties brought the goods
3 in five weeks before, and they had notice at that time
4 that the goods were stolen and under those circumstances
5 it's material, it's relevant, and it has no prejudicial
6 effect on --

7 THE COURT: Mr. Corcoran, I will show you how
8 different that theory is. If Mr. Gomez came to these
9 people with the Whitehall aspirin in February and he
10 told them they were stolen merchandise and they turned
11 it down, and they never possessed it, then Mr. Gomez
12 came to them in March with a Schick merchandise load,
13 I would allow the previous transaction even though it
14 wasn't complete, which shows you it's separate and
15 apart from possession, it's separate and apart from
16 other crimes, it's direct knowledge, direct proof of
17 intent to commit the crime. He knew, he knew that he
18 was in the business of hijacking.

19 MR. CORCORAN: How does this differ, your Honor?

20 THE COURT: It differs materially, because you
21 are trying to show from the facts of possession and the
22 possession did not show criminal intent at that time.

23 MR. CORCORAN: Possession coupled with Agent
24 Colgan's testimony that he told them they were stolen,
25 at that point it's not what they did, but what they

1 knew about the goods that they had received from a
2 certain source. I don't see any difference between
3 them.

4 THE COURT: No, I'm sorry. I say that sure,
5 there was direct evidence, but when I was charging on
6 prior criminal acts it was criminal acts and not prior
7 acts. You could have argued it to the jury, "Look,
8 Colgan told them before," that's in evidence too, but
9 that's a different theory.

10 MR. CORCORAN: I did argue that to the jury.

11 THE COURT: I'm not saying you didn't, but what
12 you want me to do is charge that on a non-criminal
13 prior act it can be offered to the jury on criminal
14 intent, and I won't accept that.

15 MR. CORCORAN: Prior notice can be offered on
16 intent.

17 THE COURT: You see, now you are changing it a
18 little bit because you criticized my charge on criminal
19 acts.

20 MR. CORCORAN: I said I'm not offering it for
21 that purpose.

22 THE COURT: But then I said to you, and repeat,
23 if I were to say now look, there is other evidence in
24 this case, there is evidence that Colgan told these
25 people about the Whitehall transaction and that it was

1 stolen merchandise, now I'm in effect summing up, I'm
2 telling them there is other evidence of criminal
3 intent.

4 MR. CORCORAN: I don't believe the Court should --

5 THE COURT: I don't think it's fair.

6 MR. YOUTT: I have nothing to add to the charge
7 on behalf of the defendant, and no further objections.

8 THE COURT: All right, I want to see if I left
9 anything out. I had made some notes.

10 I had left one out, Mr. Corcoran. I had noticed
11 conscious avoidance but I didn't have the charge on it,
12 and I didn't look at my page. I did say I was going
13 to charge on conscious avoidance, I think they're
14 entitled to that.

15 MR. YOUTT: I acknowledge, you did say that
16 your Honor and I don't think you did instruct them on
17 it.

18 THE COURT: Frankly, I was a little -- my
19 attention was diverted when I was looking for the
20 essential elements to them, and I got the charge up by
21 taking pages, and I was just charging on that so that
22 might remind me of something. I will have to give it,
23 I think we promised to give it.

24 Seat the jury, please.

25 (Jury took its place in the jury box.)

1 THE COURT: I charged you on criminal intent
2 which the lawyers agreed is the critical issue in the
3 case, and I charge you that an accused cannot knowingly
4 and deliberately refuse to learn the facts when the
5 sources of information are readily available to him;
6 he cannot refuse to look when he understands that
7 looking will advise him of the true nature of the
8 transaction.

9 Now, that charge doesn't have any special
10 significance because I gave it to you at the end, you
11 must try to place it in the context of the principles
12 that I was charging you on criminal intent.

13 I am going to excuse you at this time, I am
14 going to ask you to come in about 9:15 tomorrow.
15 Don't register downstairs, come into the jury room
16 adjoining the courtroom directly and you will again
17 have a menu, and choose your lunch; don't start your
18 deliberations because you are not yet in a position to
19 exchange ideas and discuss the evidence, and at this
20 particular point it's important that you do not discuss
21 the matter at home or anyplace else. When you leave
22 the building don't talk about it among yourselves and
23 when you assemble tomorrow, please don't discuss the
24 case. The time to discuss it is when all are together
25 in formal session, and you will not be until after I

1 swear in the marshals, so please don't talk about the
2 case when you come in tomorrow morning.

3 As soon as I find you all here, I'll call you
4 into the courtroom and I'll swear in the marshals and
5 then you'll start your deliberations tomorrow. The
6 jury is excused now. I know they said it's going to
7 be snow tomorrow, and you may have to start out a
8 little earlier, but please try to get here at a
9 quarter after nine so that we can start the delibera-
10 tions promptly at 9:30.

11 (Jury is excused from the courtroom.)

12 THE COURT: Gentlemen, try to get here before
13 9:30 so we can start promptly at 9:30, thank you.
14 I'd appreciate it if you could wait about five minutes
15 until the jury leaves the building.

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA, :

5 Plaintiff, :

6 -against- :

75-CR-762

7 CHAIM KAHAN, SOLOMON WERCBERGER, :
8 MOR WERCBERGER, :

9 Defendants. :
10 -----x

11
12 United States Courthouse
13 Brooklyn, New York

14 January 25, 1977
15 9:30 o'clock a.m.

16 B e f o r e :

17 HONORABLE JACOB MISHLER,

18 CHIEF, U.S.D.J.
19
20
21
22
23

24 PAUL KLIMASZEWSKI
25 Court Reporter

1070a

1 A p p e a r a n c e s :

2

3

DAVID G. TRAGER
United States Attorney
Eastern District of New York

4

5

BY: PAUL CORCORAN
Assistant United States Attorney

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HARRY YOUTT, ESQ.
Attorney for Defendants

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1 THE COURT: The defendants knew they were
2 supposed to be here at 9:30.

3 MR. YOUTT: I told them to be here at 9:20,
4 your Honor.

5 THE COURT: I don't know how long I should wait
6 before we replace Juror Number 2, Lavarne S. Mossman,
7 Juror Number 2 hasn't arrived yet. Do you have any
8 thoughts on it?

9 MR. YOUTT: I don't know how the weather is
10 tying people up.

11 THE COURT: Find out where she comes from,
12 Marty. This is what I mean by suspending at the end
13 of one day and praying that all twelve will be back
14 the next day. Each time I disband the jury, that's
15 the thing I worry about most, you know, during this
16 weather too.

17 THE CLERK: She is in Jamaica.

18 THE COURT: I am going to summarize the charge
19 by repeating the essential elements of the crime
20 required for each count. I'll do nothing more than that
21 and remind them of their duty to decide the case solely
22 on the evidence, and free of all bias and prejudice
23 and sympathy.

24 THE CLERK: She is from Jamaica, New York that
25 is.

1 THE COURT: Well, there's lots of train service.

2 THE CLERK: We've called downstairs and found
3 she left at 7:30, and Margo said she should be coming
4 in any moment now.

5 THE COURT: Do you have any suggestions as to
6 how long I should wait?

7 MR. YOUTT: I don't, your Honor. I will abide
8 by whatever your schedule requires.

9 MR. CORCORAN: I have no preference, your Honor.

10 THE COURT: All right Marty, bring the jury in.

11 (Jury seated in the jury box.)

12 THE COURT: I'm sorry, but Mrs. Mossman
13 apparently left very early and didn't get here and I
14 can't wait any longer. I am going to excuse Mrs.
15 Mossman and ask Mr. Platt to make -- did somebody come
16 in? Wait, let's hold that up for a moment. Maybe
17 she came in.

18 (Mrs. Mossman was seated in the jury box.)

19 THE COURT: I'd like to, in effect, ask you to
20 recall the charge that I gave you yesterday on the
21 function of the various priorities in this trial; the
22 credibility of witnesses and how to determine the
23 weight and credibility of witnesses, what the evidence
24 in the case consists of upon which you will base your
25 judgment, and inferences that you may draw from the

1 establishment of certain facts, and now I'd like to
2 remind you of the essential elements of each of the
3 crimes charged in the indictment, so that you may
4 focus on them and determine whether the government
5 proved those elements beyond a reasonable doubt.

6 On the first count in the indictment, which is
7 the conspiracy count, the government must prove beyond
8 a reasonable doubt, one, that the conspiracy described
9 in Count One was willfully formed for the purposes as
10 alleged in the count and was existing at or about the
11 time alleged. Two, that the accused knowingly and
12 willfully became a member of the conspiracy. Three,
13 that one of the conspirators thereafter knowingly
14 committed at least one of the overt acts charged in
15 the indictment at or about the time and place alleged,
16 and four, that such overt act was knowingly done and
17 in furtherance of some object or purpose of the con-
18 spiracy. That's the elements of the conspiracy charge.

19 On the substantive count, the knowing possession
20 of stolen merchandise, in this case the Schick products.
21 One, the act of stealing and carrying away from the
22 Time DC truck the Schick products which constituted a
23 shipment in interstate commerce. Two, that the act of
24 stealing from the truck was committed unlawfully with
25 intent to convert the Schick products to the use of

1 the perpetrators of that crime. Three, the act of
2 possessing the Schick products by the accused and,
3 fourth, that that possession was knowing.

4 Now at this point I will ask the Clerk to swear
5 in the marshals.

6 (Court Clerk swears in two jury marshals.)

7 THE COURT: I will excuse Alternates Numbers 1
8 and 2 at this point, and ask you to take your belong-
9 ings out of the jury room. Of course, lunch has been
10 ordered for you and if you will be around for a little
11 while, I'll ask for the courtroom deputy and you can
12 have your lunch.

13 THE CLERK: Please take your cards down to the
14 central jury room and then check back with me.

15 THE COURT: I ask the jury to recall the oath
16 that you took and that was to render a true and just
17 verdict, and that means, in turn, means a verdict
18 based on the evidence and free of all bias, prejudice
19 and sympathy. The jury is excused for deliberations
20 on the matter before it.

21 (Jury retires to jury room for deliberations.)

22 THE COURT: I'll be available until about
23 quarter past eleven or twenty past eleven, at that
24 point I'll advise the jury that if they have any notes
25 they can send them in, but I just won't be able to

1 answer them. My office will be in touch with you and
2 I'll be in touch with my office, so if there is some
3 emergency like a verdict I'll come right over, and I'm
4 about ten or fifteen minutes away, I'll be at Foley
5 Square.

6 MR. CORCORAN: Your Honor, with regards to the
7 documentation, should we leave it here?

8 THE COURT: I think you should leave them on
9 the Clerk's bench and each one make a pile of their
10 own exhibits and make certain that the exhibits are in
11 evidence, and that they're in the form that they may
12 be submitted to the jury in the event the jury asks
13 for them.

14 I shall not send any exhibits in without the
15 lawyers agreeing that they're in evidence, but you can
16 do that in the meantime and --

17 MR. YOUTT: I take it in the absence of the
18 jury, we won't be reassembling before the verdict?

19 THE COURT: Well, if there is some emergency I
20 think I can be spared over there, I certainly will
21 come over, this is my first interest, you know.

22 MR. YOUTT: Okay.

23 (Court was recessed.)

24 THE CLERK: Two notes from the jury marked
25 Court's Exhibits 3 and 4.

1 (So marked.)

2 THE COURT: Okay, they want all of the defendants'
3 exhibits, warehouse receipts. Will you get that
4 together, please?

5 Do you have any warehouse receipts?

6 MR. CORCORAN: I have warehouse receipts, the
7 ones pertaining to the shipment.

8 THE COURT: I don't know whether they mean those
9 marked by the defendant or whether they mean those
10 marked by the government, so I'll ask them that. I
11 assume they want all of the warehouse receipts.

12 Seat the jury, please.

13 (Jury is seated in the jury box.)

14 THE COURT: I think you asked for a copy of
15 the indictment, it's one indictment and it has two
16 counts, you see, and I'll ask the Clerk to Xerox half
17 a dozen copies of the indictment.

18 THE CLERK: Sure.

19 THE COURT: The next thing you asked for was
20 the testimony of Paul Pollari. Fortunately, Pollari's
21 testimony is transcribed. You also asked for Solomon
22 Worcberger's testimony, that was not transcribed, so
23 when I get through reading the testimony of Pollari
24 the Court Reporter will get his notes. I'm not quite
25 sure what is meant by testimony and cross-examination;

1 what does that mean?

2 THE FOREMAN: The government attorney's cross-
3 examination.

4 THE COURT: Only that. Now I know what you
5 want.

6 (The Court reads the direct examination of the
7 witness Paul Pollari.)

8 THE COURT: I will suspend reading at Line 3
9 on Page 13 and resume on Page 20. I will suspend here
10 at Line 13, and I won't read the charge.

11 MR. YOUTT: Acceptable, your Honor.

12 THE COURT: And at Page 20, and I will go to
13 Line 18 on Page 21.

14 (The Court resumes reading the transcript of
15 testimony.)

16 THE COURT: I will suspend at Line 13 again,
17 it was an instruction. Shall I dispense with that?

18 MR. YOUTT: Yes, your Honor, that's acceptable.

19 (Court resumes reading transcript to jury.)

20 THE COURT: I will suspend at Line 13 on Page
21 Number 26 and I will go on to Line 9 on Page 27.

22 (Court resumes reading transcript of testimony
23 to jury.)

24 THE COURT: That completes Mr. Pollari's
25 testimony, this is Line 13 Page 39. Now, the third

1 request in this note which is Court's Exhibit 3 is
2 defendants' exhibit warehouse receipts.

3 Now you understand that the defendant had ware-
4 house receipts marked as defendants' exhibits, and
5 there are other warehouse receipts that allegedly came
6 from the defendants' files that were marked as govern-
7 ment's exhibits. Do you want all the warehouse receipts
8 or do you just want those marked by the defendant?

9 THE FOREMAN: All.

10 THE COURT: All right, they will be sent in to
11 you, and six copies of the indictment will be handed
12 in.

13 MR. YOUTT: Your Honor, may the jury be
14 instructed concerning the nature of the indictment and
15 its --

16 THE COURT: Yes. When you read this indictment
17 you will see others named in the caption, and if you
18 recall the way I read it, I read it in line with the
19 charge before you. You are to consider only the
20 charge against these defendants in the indictment. In
21 other words, you will find for example it says the
22 defendants Emanuel Gomez, Stanley Diamond, Vincent
23 Santa also known as Jimmy Santa, Frank Joseph Maloney,
24 and I didn't read them as defendants. I read it as
25 Chaim Kahan, Solomon Werberger and Mor Werberger as

1 defendants, and I said the charge said that they
2 together with ^Manuel Gomez, Stanley Diamond, Vincent
3 Santa, Frank Joseph Maloney willfully conspired and
4 agreed, and so that you will find a charge that I used
5 to tailor it to this case, but you must also understand
6 that the indictment is only a charge. Don't read the
7 allegations and think of it in evidence, you think of
8 it as the charge and then you check the evidence and
9 evaluate the evidence and see if the government proves
10 the charges beyond a reasonable doubt. The defendants,
11 of course, pleaded not guilty to both counts of this
12 indictment.

13 So, this will be turned over to you, the indict-
14 ment will be turned over to the marshals for delivery
15 to you, and all the warehouse receipts will be turned
16 over to the marshals for delivery to you. Now on the
17 second note, as I stated the reporter will go down and
18 get his notes, and he will read his notes on the cross-
19 examination of Solomon Werberger to you. The jury is
20 excused.

21 (Jury leaves the jury box.)

22 THE COURT: Seat the jury.

23 (Jury takes its place in the jury box.)

24 THE COURT: Now, of course you asked for the
25 cross-examination of Solomon Werberger. The reporter

1 will now read it to you.

2 (Reporter reads back the cross-examination of
3 Solomon Werberger.)

4 THE COURT: That's the cross-examination. Now
5 I must tell you that I will be leaving for Foley Square
6 and my office will be in touch with me, they know just
7 where I am and I will be at a meeting as I explained
8 yesterday. The chances are your notes will be un-
9 answered, but if it's of great importance I'll just
10 have to come back and tend to you. You are my first
11 concern, the other is just a meeting, but I'm sorry I
12 can't be readily available, and I usually am during the
13 trial but you will understand if you don't get an
14 immediate answer. I should be back no later than 2:30,
15 but as I say, if you have reached a verdict in the
16 meantime, you can transmit that to the marshals and as
17 soon as I am advised I will come right back. The jury
18 is excused.

19 (The jury leaves the jury box.)

20 THE COURT: If there is any problem, just
21 contact my office, they know where to get me.

22 (Court is recessed.)
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AFTERNOON SESSION

THE COURT: We have a note from the jury, that, "We have reached a verdict." Please mark this and seat the jury.

THE CLERK: Note from the jury marked Court Exhibit Number 5.

(So marked.)

(The jury took its place in the jury box.)

THE COURT: Mr. Foreman, would you please stand? I have your note saying the jury has reached a verdict in the United States of America against Chaim Kahan, Solomon Werberger and Mor Werberger.

How do you find the defendant, Chaim Kahan as to Count One; guilty or not guilty?

THE FOREMAN: Count One, we find not guilty.

THE COURT: How do you find the defendant Solomon Werberger; guilty or not guilty on Count One?

THE FOREMAN: Werberger as to Count Two, guilty.

THE COURT: As to Count One, how do you find the defendant Solomon Werberger as to Count One; guilty or not guilty?

THE FOREMAN: Not guilty.

THE COURT: How do you find the defendant Mor Werberger; guilty or not guilty?

THE FOREMAN: Not guilty.

1 THE COURT: As to Count Two; how do you find the
2 defendant, Chaim Kahan?

3 THE FOREMAN: Guilty.

4 THE COURT: And as to Count Number Two, how do
5 you find the defendant Solomon Werberger; guilty or
6 not guilty?

7 THE FOREMAN: Guilty.

8 THE COURT: As to Count Number Two, how do you
9 find the defendant Mor Werberger; guilty or not guilty?

10 THE FOREMAN: Guilty.

11 THE COURT: You may be seated. You have heard
12 the verdict as it was read by the foreman; is that
13 your verdict?

14 THE JURY: (Chorus of ayes.)

15 THE COURT: Juror Number 2, is that your verdict?

16 JUROR NO. 2: Yes.

17 THE COURT: Juror Number 3, is that your verdict?

18 JUROR NO. 3: Yes.

19 THE COURT: Juror Number 4, is that your verdict?

20 JUROR NO. 4: Yes, it is.

21 THE COURT: Juror Number 5?

22 JUROR NO. 5: Yes, sir.

23 THE COURT: Juror Number 6?

24 JUROR NO. 6: Yes.

25 THE COURT: Juror Number 7, is that your verdict?

1 JUROR NO. 7: Yes.

2 THE COURT: Juror 8, is that your verdict?

3 JUROR NO. 8: Yes.

4 THE COURT: Juror 9, is that your verdict?

5 JUROR NO. 9: Yes.

6 THE COURT: Juror Number 10, is that your
7 verdict?

8 JUROR NO. 10: Yes.

9 THE COURT: Juror 11, is that your verdict?

10 JUROR NO. 11: Yes.

11 THE COURT: Juror 12, is that your verdict?

12 JUROR NO. 12: Yes.

13 THE COURT: And the jury panel, so say you all?

14 JURY PANEL: (Chorus of ayes.)

15 THE COURT: Is there any motion, Mr. Youtt,
16 that you would like to make at this time, with respect
17 to the jury while all your other motions are reserved?

18 MR. YOUTT: No, no motion.

19 THE COURT: All right, the jury is excused with
20 the thanks of the Court. I am confident that you
21 looked at the evidence, seriously and attentively.
22 You gave us your serious consideration, and I don't
23 think the defendants can complain. I think they had a
24 fair trial, and you are excused again, with the thanks
25 of the Court. Please report back to the central jury

1 room.

2 (Jury is excused.)

3 THE COURT: Any question of bail here?

4 MR. CORCORAN: I have no objection to continuing
5 bail as it presently stands.

6 THE COURT: What's the bail conditions?

7 MR. CORCORAN: \$25,000.

8 MR. YOUTT: Personal recognizance of \$25,000.

9 THE COURT: Defendants may continue in bail
10 upon the terms and conditions as previously fixed.

11 You don't have a probationary officer here, do
12 you?

13 THE CLERK: No, sir. I can call one up, if
14 they can wait.

15 THE COURT: Would you, please? All the exhibits
16 should go back to the file from where the exhibits
17 came, regardless of who had them marked. In other
18 words, if the government marked exhibits as coming
19 from your files, Mr. Youtt, they should be returned
20 to you.

21 MR. YOUTT: Fine.

22 THE COURT: And the other way around, and if
23 either party Xeroxed copies of the exhibits and --

24 MR. YOUTT: I think the only one is the auto-
25 mobile situation, which you marked of mine.

1 Shall I take the defendants down to the
2 probation office?

3 THE COURT: You might miss them. I suggest you
4 wait here in the courtroom.

5 I just want to take this opportunity to commend
6 both lawyers for an excellent job. Of course, I don't
7 know whether you'll ever be able to convince your
8 client or clients, Mr. Youtt, that you did an excellent
9 job, but for what it's worth I thought it was one of
10 the best tried defendants' cases that I have had in a
11 long, long time.

12 MR. YOUTT: Thank you, your Honor.

13 THE COURT: Mr. Corcoran, I thought you were
14 remarkably zealous in this prosecution, because you
15 usually are a mild mannered prosecutor, maybe even to
16 a fault, but in this case --

17 MR. CORCORAN: I think it was probably relative,
18 I think compared to Mr. Youtt, I appeared --

19 THE COURT: Well, you probably are impelled by
20 the quality of the work that's against you, but I
21 thought it would have been a different effect, because
22 Mr. Youtt tried his case in a very mild manner, almost
23 low pressure we might call it, and that might induce
24 a fellow like you to just sit back and do nothing, but
25 it didn't work that way, but it was a very well tried

1 case. Where is your office, Mr. Youtt?

2 MR. YOUTT: Manhattan, your Honor, 53rd Street.

3 THE COURT: First case you've had before me;
4 have you tried other cases in this court?

5 MR. YOUTT: Yes, before Judge Rayfiel and
6 Judge Bartels.

7 MR. CORCORAN: Thank you, your Honor.

8 THE COURT: All right.

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EXHIBITS

928-A

COURTIn Ev.

3 Jury note
4 Jury note
5 Jury note

917

917

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* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

CHAIM KAHAN, SOLOMON WERCBERGER
and MOR WERCBERGER,

DOCKET NO. 75 CR 762

Defendants.

----- x

GOVERNMENT'S REQUESTS TO CHARGE

DAVID G. TRAGER
UNITED STATES ATTORNEY
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

PAUL F. CORCORAN
Assistant U.S. Attorney
(Of Counsel)

REQUEST NO. 1CIRCUMSTANTIAL EVIDENCE

You may hear me sometimes refer to direct evidence and to circumstantial evidence, and it is well to explain now the difference between these two types of evidence.

Direct evidence is where a witness testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence for in either case you must be convinced beyond a reasonable doubt of the guilt of a defendant.

Let us take one simple example, one which is often used in this Courthouse, to illustrate what is meant by circumstantial evidence. We will assume that when you entered the Courthouse this morning the sun was shining brightly outside, and it was a clear day. There was no rain. The sky was clear. Now, assume

that in this courtroom the blinds are drawn and the drapes are drawn, so that you cannot look outside. Assume as you are sitting in this jury box, and despite the fact that it was dry when you entered the building, somebody walks in with an umbrella dripping water, followed in a short time by a man with a raincoat, which raincoat is wet.

Now, on our assumptions you cannot look out of the courtroom and see whether it is raining or not, and if you are asked is it raining, you cannot say that you know it directly of your own observation. But certainly upon the combination of facts as given, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it was raining now.

That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact.

There are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defendant asks you to draw another. It is for you to decide, and for you alone, what inferences you will draw.

From the charge of the Hon. Inzer B. Wyatt in United States v. Dodge, 64 Cr. 619, pp. 3165-67, affirmed under name United States v. Edwards, 366 F.2d 853 (2d Cir. 1966), cert. denied, under name Jakob v. United States, 386 U.S. 908 (1967).

REQUEST NO. 2Defendant's Testimony -- Requested Only
If Defendant Testifies.

The law permits a defendant at his own request to testify on his own behalf. The testimony of an individual defendant is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest creates a motive for false testimony; that the greater the interest, the stronger is the temptation, and that the interest of the defendant is of a character possessed by no other witness and is, therefore, a matter which may seriously affect the credence that should be given to his testimony.

Reagan v. United States, 157 U.S.
301 , 310 (1895);

United States v. Paccione, 224 F.2d
801, 803 (2d Cir.), cert. denied,
350 U.S. 896 (1955);

United States v. Mahler, 363 F.2d
673, 678 (2d Cir. 1966).

REQUEST NO. 3False Exculpatory Statements

There has been testimony that the defendants made a number of statements tending to show their innocence at the time of their arrest. The Government alleges these statements were false.

I charge you that exculpatory statements, when shown to be false, are circumstantial evidence of guilty consciousness and have independent probative force.

United States v. Smolin, 182 F.2d 782, 786 (2d Cir. 1950);

United States v. DeAlesandro, 361 F.2d 644, 697-8 (2d Cir.), cert. denied, 385 U.S. 842 (1966);

United States v. Tropiano, 418 F.2d 1069, 1081 (2d Cir. 1969).

REQUEST NO. 4Proof of Knowledge and Intent

Knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

United States v. Platt, 182 F.2d
469, 471 (2d Cir. 1950);

Paschen v. United States, 70 F.2d
491, 498 (7th Cir. 1934);

United States v. Kelley, 186 F.2d
598 (7th Cir.), cert. denied, 341
U.S. 954 (1951).

REQUEST NO. 5Recent Possession of Stolen Property
Implies Guilty Knowledge

Possession of the fruits of crime, recently after its commission, justifies the inference that the possession is guilty possession, and though only prima facie evidence of guilt, may be of controlling weight unless explained by the circumstances or accounted for in some way consistent with innocence.

Wilson v. United States, 162 U.S.
613, 619 (1896), qyoted with approval
in United States v. Lefkowitz, 284
F.2d 310, 313 (2d Cir. 1960);

United States v. Kompinski, 373 F.2d
429, 433 (2d Cir. 1967).

REQUEST NO. 6Similar Acts -- Intent

You may consider, in determining whether the defendant acted with guilty knowledge or intent, the fact, if you find it true, that the defendant engaged in other transactions similar to those charged in the indictment.

Kaplan v. United States,
18 F.2d 939, 943 (C.A. 2d 1927);

United States v. Shurtleff, 43
F.2d 944, 947 (C.A. 2d 1930);

United States v. Leitner, 312
F.2d 107, 108 (2d Cir. 1963);

United States v. Deaton, 381
F.2d 114 (2d Cir. 1967);

United States v. Mazzochi,
Docket No. 34284 (April 7, 1970).

REQUEST NO. 7Knowledge of Interstate Movement
of Goods

The defendants are charged with receiving and having in their possession goods stolen from interstate commerce and with conspiracy to receive and possess goods stolen from interstate commerce. In order to be guilty of these offenses, the defendants need not have known at the time that the Schick products in question were stolen while moving in interstate commerce. It is sufficient that the defendants knew the Schick products were stolen goods.

United States v. Fiola, 420
U.S. 671, (1975);

United States v. Viruet, Slip Op. p. 5149
2d Cir. (1976).

REQUEST NO. 8Conscious Avoidance

One may not wilfully and intentionally remain ignorant of a fact, important and material to his conduct, in order to escape the consequences of the criminal law.

If you find from all the evidence beyond a reasonable doubt that any defendant believed he received and was then in possession of stolen Schick products and deliberately and consciously tried to avoid learning that the Schick products in question were stolen in order to be able to say, should he be apprehended, that he did not know, you may treat his deliberate avoidance of positive knowledge as the equivalent of knowledge.

In other words, you may find that any defendant acted knowingly if you find that either he actually knew that he had received stolen Shick products or that he deliberately closed his eyes to what he had every reason to believe was the fact.

I should like to emphasize, ladies and gentlemen, that the requisite knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of a defendant.

United States v. Joyce, Second Circuit
Slip Op. No. 124; decided September 20,
1976.

Heaton Slip Op 408 409 410

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- -X

UNITED STATES OF AMERICA, x

Plaintiff, x

-against- x

75 CR 762
J.M., U.S.D.J.

MANUEL V. GOMEZ, STANLEY DIAMOND, x

VINCENT SANTA, a/k/a Jimmy Santa, x

FRANK JOSEPH MALONEY, CHAIM KAHAN, x

SOLOMON WERCBERGER and MOR WERCBERGER, x

Defendants. x

----- -X

DEFENDANTS' REQUESTS
FOR JURY INSTRUCTIONS

JURY INSTRUCTION NO. 1

One can be found guilty of possession of stolen goods only if the government has proved beyond a reasonable doubt that the person in possession of the goods in fact knew that those goods were stolen.

See Mullhaney v. Wilbur, -- U.S.--, 95 S.Ct. 1881 (1975).

JURY INSTRUCTION NO. 2

In determining whether a person in possession of goods knows whether those goods are stolen, you may examine the evidence of the factual circumstances surrounding possession of the goods.

See Mullhaney v. Wilbur, 95 S.Ct. 1881, 1891 (1975).

For instance, you may examine the type of relationship between the defendant and the goods. In the present case the defendants were warehouseman not required by law to investigate whether the person who deposited the goods in fact was the owner of those goods. Similarly, you may consider how recently the goods were stolen or whether the defendants gave any explanation as to how they came into possession of the goods.

Barnes v. United States, 412 U.S. 837 (1973).

However, after you have examined the surrounding circumstances, you may conclude that the defendants did know that those goods were stolen only if the circumstances you examined support that conclusion beyond a reasonable doubt.

Mullhaney v. Wilbur, 95 S.Ct. 1881 (1975).

JURY INSTRUCTION NO. 3

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular defendant was a member of the conspiracy, if any, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

I Devitt & Blackmar, Federal Jury Practice and Instructions § 29.05, p. 436 (2d ed. 1970).

JURY INSTRUCTION NO. 4

Where an essential element of the offense charged is agreement, a further agreement must be shown in order to support a conspiracy charge. Thus one who knowingly receives stolen goods is not, on that showing alone, guilty of conspiracy relating to the theft of the goods.

United States v. Varelli, 407 F.2d
735 (7th Cir. 1966).

JURY INSTRUCTION NO. 5

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

1 Devitt & Blackmar, Federal Jury Practice and Instructions § 23.07, p. 365 (2d ed. 1970).

The inference that a particular defendant is guilty of conspiracy should not lightly be drawn from the mere fact of meetings between or among the alleged co-conspirators.

Adapted from United States v. Di Re, 332 U.S. 581, 593 (1948).

JURY INSTRUCTION NO. 6

Before the jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

1 Devitt & Blackmar, Federal Jury Practice and Instructions §29.05, p. 435 (2d ed. 1970).

JURY INSTRUCTION NO. 7

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts thereafter knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made, or see the act done.

Therefore, statements of any conspirator, which are not in furtherance of the conspiracy, or made before its existence, or after its termination, may be considered as evidence only against the person making them.

1 Devitt & Blackmar, Federal Jury Practice and Instructions § 29.06, pp. 438-39 (2d ed. 1970).

United States of America vs.

12 CR 105

DEFENDANT

CHAIM KAHAN

DOCKET NO. 75 CR 762

JUDGMENT AND PROBATION/COMMITMENT ORDER

APR 15 1977

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 3 DAY 18 YEAR 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Harry E. Youtt

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea.☐ NOLO CONTENDERE.☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. in count 2FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Secs. 659 & 2 in that on or about March 13, 1975, the defendant, with others, did wilfully and unlawfully receive and have in their possession approximately 5,072 cartons of Schick Company Products, having a value in excess of \$100 which goods had been stolen from a Time-D.C. Trucking Corp. truck bearing California license plate while moving as part of an interstate shipment of freight from West Haven, Conn. to Anaheim, California

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, he appearing to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

Defendant is sentenced to a term of imprisonment on count 2 for a period of 3 years pursuant to Title 18, U.S. Code, Sec 4205(b)(2),

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATIONCOMMITMENT
RECOMMEN-
DATION

The court refers defendant to the custody of the Attorney General and recommends.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

James M. ...
Date 3/18/77

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D. N.Y.
★ MAR 18 1977 ★
TIME A.M. _____
P.M. _____

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for failure to comply with the conditions of probation.

11 1977 12 9

United States of America vs.

DEFENDANT

MOR WERBERGER

DOCKET NO. 1

75 CR 762

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
3 18 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Harry Youre

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. in count 2FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Secs. 659 & in that on or about Mar. 13, 1975, the defendant, with others, did wilfully and unlawfully receive and have in their possession approximately 5,972 cartons of Schick Co. products, having a value in excess of \$100 which goods had been stolen from Time-D Trucking Corporation truck bearing California license plate while moving as part of an interstate shipment of freight from West Haven, Conn. to Anaheim, California

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the court was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

Defendant is sentenced to a term of imprisonment on count 2 for a period of 3 years pursuant to T-18, U.S. Code, Sec. 4205(b)(2).

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATIONCOMMITMENT
RECOMMEN-
DATION

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate*James B. Moskler*

Date 3/18/77

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ MAR 18 1977 ★
TIME A.M. _____
P.M. _____

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

(20)

United States of America vs.

DEFENDANT

SOLOMON WERBERGER

Eastern District of New York

DOCKET NO.

75 CR 762

JUDGMENT AND PROBATION/COMMITMENT ORDER

AGREED BY

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 3 DAY 18 YEAR 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL~~Paul E. Gerson~~ HARRY YOUTT, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. in count 2FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Secs. 659 & 2 in that on or about Mar. 13, 1975, the defendant, with others, did wilfully & unlawfully receive and have in their possession approximately 5,072 cartons of Schick Co. Products, having a value in excess of \$100 which goods had been stolen from a Time-D.C. Trucking Corp. truck bearing California license plate while moving as part of an interstate shipment of freight from West Haven, Conn. to Anaheim, California

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

Defendant is sentenced to a term of imprisonment on count 2 for a period of 3 years pursuant to T-18, U.S. Code, Sec. 4205(b)(2)

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATIONCOMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

Jacob Resnik

Date

3/18/77

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAR 18 1977
TIME A.M. P.M.

(11)

11 929

Form A.O. 93 (Rev. Apr. 1971)

RJD:SD:ip
F.8751,400

Search Warrant

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

Docket No.

Case No.

PREMISES KNOWN AS CBS WAREHOUSE,
INC., A MULTI-STORY RED BRICK
BUILDING KNOWN AS BUILDING NO.
58 LOCATED AT THE FOOT OF 50TH
STREET, BROOKLYN, NEW YORK,
Defendant.

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION AND/OR TO
ANY UNITED STATES MARSHAL AND/OR ANY OF HIS DEPUTIES.

Affidavit(s) having been made before me by Special Agent Patrick F. Colgan of
the Federal Bureau of Investigation

that he has reason to believe that { ~~on the person of;~~
on the premises known as } PREMISES KNOWN AS CBS
WAREHOUSE, INC., A MULTI-STORY RED BRICK BUILDING KNOWN AS BUILDING
NO. 58 LOCATED AT THE FOOT OF 50TH STREET, BROOKLYN, NEW YORK

in the EASTERN

District of NEW YORK

there is now being concealed certain property, namely

here describe property

several cartons of Schnick razors and toilet products bearing
the Schnick, Inc., Spec No. 92-40 which cartons were stolen from
an interstate commerce on March 11, 1975 in violation of Title 18,
United States Code, Section 659

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the person or premises above described and that grounds for application for issuance of the
search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of Forty-eight hours
(not to exceed 10 days) the person or place named for the property specified, serving this warrant
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written
inventory of the property seized and promptly return this warrant and bring the property before
as required by law.

Federal Judge or magistrate

Dated this 13th day of March

1975

VINCENT A. CATOGGIO

Judge (Federal or State Court of Record) or Federal Magistrate

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision
in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for rea-
sonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

4B-16251
D-75032003374
FBI
LABORATORY
77698

UNIFORM STRAIGHT BILL OF LADING
(PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION)
ORIGINAL—NOT NEGOTIABLE

Agent's No. _____

RECEIVED. Subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

(LINTON) (VONN)

3-12-75 19

OM SCHIEK 5-12-73, 19
property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word
pany being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own
or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route or
nation of it as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or
en, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Assigned to INTERNATIONAL TRADING Co
 Destination c/o C.B.S. WAREHOUSE State of _____ County of _____
 Route Foot of 50 St
 Delivering Carrier BROOKLYN, N.Y. Car Initial _____ Car No. _____

NO. OF PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (SUBJECT TO CREATION)	CLASS OR RATE	CHECK COL.
	RAZORS + BLADES			
	HOLD FOR SHIPMENT			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse to the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received \$ _____
to apply in prepayment of the charges on the property described hereon.

Agent or Cashier. _____

Per _____
(The signature here acknowledges only the amount prepaid.)

Charges advanced: \$ _____

When a shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

Per _____
(The signature here acknowledges only the amount prepaid.)

Charges advanced :

Shipper.

Per

Permanent Post-office address of Shipper.

STRAIGHT BILL OF LADING — SHORT FORM — ORIGINAL — NOT NEGOTIABLE

Carrier's No. _____

(Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

BROOKLYN, N. Y. 11232

C. B. S. WAREHOUSES, Inc.

19

Only as described below. In apparent good order, except as noted. Contents and condition of packages unknown. Marked, consigned and destined as indicated below, which said carrier, the word carrier being understood to mean any person or corporation in possession of the property under the contract, agrees to carry to its usual place of delivery at said destination. It is further agreed, as to each carrier at all any of said property, over all or part of said route to destination, and to each party at any time interested in it, that any delivery to another carrier on the route to destination shall be subject to all the terms and conditions of the Uniform Domestic Freight Bill of Lading, and to the Uniform Freight Classification in effect on the date hereof. It is further agreed, as to each carrier at all any of said property, that every service to be performed by said carrier shall be performed in conformity with all the terms and conditions of the said bill of lading, including those on the back hereof, set forth in the classification of the property, which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

ned to 160114 (Mail or street address of consignee—For purposes of notification only)

ation _____ State _____ County _____ Delivery Address *

*To be filled in only when shipper desires and governing tariff provides for delivery thereon.

ing Carrier _____

NO PACKAGES	Kind of Package, Description of Articles, Special Marks, and Exceptions	Car or Vehicle Initials		CLASS OR RATE	CHECK COLUMN	No.
		• WEIGHT SUBJECT TO CODE				
	274-219					Subject to Section 7 at conditions of applicable bill of lading. If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
						Per _____ Signature of Consignor
						If charges are to be prepaid write or stamp here: To be Prepaid _____
						Received \$ _____ to apply in prepayment of the charges on the property described hereon.
						Agent or Cashier Per _____
						The signature here acknowledges only the amounts prepaid.

if moves between two parts by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. If the declared value of the property is hereby specifically stated by the shipper to be not over \$100,000, the rate shall be \$1.00 per \$100 of value.

C. B. S. WAREHOUSES, Inc.

ldg. 58, Ft. of 50th St., Bush Terminal,
Brooklyn, N. Y. 11232

post office address of shipper

Shipper, Per _____ Agent, Per _____

1

Printed by Peerless Press, Brooklyn, N. Y. 11219

^{One (1)}
Service of three ~~3~~ copies of the within
is admitted this 1st day of JUNE 1977

United States Attorney for
the Eastern District

RECEIVED
U.S. ATTORNEY

JUN 1 10 58 AM '77

EAST. DIST. N.Y.

Jane Brown